Report of the Chairman RMS Review Committee

Richard Cashin
November 2005

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RMS REVIEW COMMITTEE

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EXECUTIVE SUMMARY

This report fulfils the mandate I was given by the Premier of the Province to review the pilot project on Raw Material Sharing (RMS) in the crab fishery and to recommend on the future of this approach. I was also mandated to recommend on any other matters related to this issue as appropriate. I have held extensive discussions with representatives of all parts of the industry, both collectively and individually. I have reviewed a variety of past reports that have already examined many of these same types of fishery issues. A variety of new and current information was also assembled for my review and use. I have received additional advice from the three-member committee that was established to assist and advise me.

Early on, I came to a conclusion that RMS was a seriously flawed concept in its proposed application to the crab fishery. It had been promoted as a cure-all for the instability and inefficiencies of that sector. In my view, it has been badly oversold in some respects and in a manner that has resulted in many parties not being convinced it has any merits. Indeed, support for it has actually declined over the last six years or so while opposition to it has clearly increased. It did little or nothing to affect such outcomes of the 2005 crab fishery as: the length of operating times, improved product, or the levels of prices paid. In the latter case, it had neither a positive nor a negative effect; market conditions and forces and exchange rate fluctuations are the cause of changes in the annual levels of crab prices. I conclude that, in the changed nature of today's crab fishery, RMS will not provide the claimed stability or the necessary efficiency improvements. Therefore, it should be dispensed with immediately. The only alternative to RMS that was suggested was some form of limitation on production; a notion that appears to have little, if any, support from either party.

The case for RMS is similar to that used in support of IQs/ITQs in harvesting. I am not convinced that even there the claimed beneficial results always occur especially as it relates to conservation. A current example is the case of 3Ps cod where the expected

decrease in this stock's TAC for the next fishing season is because of increased concentration of fishing effort on the older and more productive year classes in that stock. When IQs were adopted in this area, a major switch to gillnets occurred as a logical economic decision because the only effective price differential for cod was based on size. However, nothing has been done about this since the late 1990s and now it could be having an effect on conservation.

I examined and recommended on other underlying causes of much of the current problems in this fishery. Solving these will go a long ways towards eliminating most of the reasons why some processors proposed RMS. I have recommended that the collective bargaining provisions of the Fishing Industry Collective Bargaining Act be strengthened and updated to ensure that fish prices are settled before the best opening times for various fisheries. This should also include the changes necessary to ensure that collective bargaining in the harvesting sector is carried on under the same types of provisions that apply to the conduct of labour relations in the province generally.

I have concluded that instability in the crab industry is seriously affected by creeping corporate control of harvesting and the resulting predatory practises, and the levels of excess capacity in both the harvesting and processing sectors. The first of these causes might have been somewhat reduced by RMS but not eliminated. Most of this instability is caused by a combination of increasingly shorter fishing seasons, DFO's failure to properly enforce its Fleet Separation Policy, decreased access to independent financial resources by harvesters, and possible under-reporting of catches and production. I have proposed a series of measures to address these matters, including all parties exploring a production limitation system and encouragement of increased cooperation in transferring, distribution, and sharing of available raw material. I also suggest the administration of the Fisheries Loan Guarantee Program be examined to ensure it is contributing to, and not hindering, the independence of individual harvesters. I also feel the continuing reports of under-reporting warrant some renewed attention.

Both levels of government have contributed to the level of excess capacity in this sector. The Provincial Government, in the mid 90s, drastically increased crab processing capacity by licensing some 17 additional operations. Harvesting capacity has not been reduced over the last ten years because the Federal Government's vessel replacement rules require individual fleet rationalisation plans to be adopted before much needed measures as combining of enterprises and larger vessels can be achieved. This is hampered because the lack of enforcement of Fleet Separation Policy is permitting more company control of fishing licences even though such ownership is supposed to have been frozen at the level it had reached in 1979. All of these matters have a connection back to the current instability, the dysfunctional state of collective bargaining and various destructive predatory practices.

I have become really struck by how so much of the underlying causes of the current problems in this sector were initially caused by uncoordinated management decisions by the two levels of government, each acting in isolation in its own sphere of influence. The continuance of these problems also is due, in large part, to the same lack of co-ordinated, or indeed any action, on finding solutions. When each level of government makes isolated decisions in its own sphere of influence, the results are the current conditions we find in this sector. The causes of the present state of affairs are so intertwined that a classic case for joint management of the two sectors is obvious.

My recommendations to deal with these related problems also include an immediate joint Federal/Provincial capacity reduction project, adoption of proper enforcement and related measures to support Fleet Separation, encouragement of fleet rationalisation plans and, interim financing to both harvesters and processors to undertake internally funded capacity reduction activities in their respective sectors. I have also indicated that temporary combining of any size of enterprises should be permitted in 2006 if present resource and market conditions do not improve. More importantly, I am proposing that the Provincial Government seek a longer-term

solution to these problems by developing a joint management arrangement for both the harvesting and processing sectors with the Federal Government.

The fishing industry is suffering from a significant structural problem caused by the changing global marketplace for seafood, the severe processing competition from low cost economies and an aging and surplus labour force where many remain who were not able to leave when groundfish stocks collapsed. A labour reduction strategy is badly needed if this industry is to retain younger workers who will be in critical demand in the near future. I have suggested this should be treated as similar to the situation faced by the textile industry and must involve financial participation by both levels of government and the industry.

Finally, I proposed that a renewed commitment to this industry is needed by all parties and I have recommended that the Provincial Government become the catalyst and assume a leadership role. There is an urgent need for this in the current crisis facing this industry, rural communities and the province as a whole.

1.0 INTRODUCTION

On March 2, 2005, the Minister of Fisheries and Aquaculture announced that government would proceed with a two-year pilot project on Raw Material Shares (RMS) in the Newfoundland and Labrador snow crab fishery. A condition of the crab processing licence would cap the amount of raw material that seafood producers could process. Government would develop and implement the shares through a process that included an arbitration procedure. An arbitrator would determine the final shares of crab raw material at 90% to 105% of the previous three-year average. As well, historic dependence and adjacency were to be recognized. A requirement that at least 75 percent of the crab landings in each of four geographical areas be processed there was also part of the overall project design. There would be no permanent transfers and in-season/temporary transfers only under specific extenuating circumstances.

A monitoring arrangement would be required of industry while the government would institute an administrative penalty system for breaches of the terms and conditions of the pilot project. Government also proposed establishing a transparent price setting mechanism that would involve checking prices paid against actual receipts from sales to the markets. A formal review of the RMS system would take place after the two-year trial.

The Association of Seafood Producers (ASP) welcomed the announcement but expressed a caveat about the practicality of the proposed price setting mechanism. The Fishermen, Food and Allied Workers Union (FFAW) immediately rejected the proposal outright and a series of protests commenced on March 9. These would continue until close to mid-May. By April 29, three members of ASP had left that association because of dissatisfaction with some features of the pilot project. By this time, government was offering to reduce the pilot project to one year and to appoint an independent committee to oversee the implementation and monitoring of the RMS system. This committee would have representatives from processors, harvesters, government and a mutually accepted independent third party chair who would have

the mandate and authority to recommend to government whether the RMS should be continued after the one-year trial.

On May 10, Premier Williams asked me to review the crab RMS project with a clear mandate to decide the future of RMS. Government would abide by my findings and recommendations. On May 13, FFAW crab committees commenced price negotiations with crab processors and reached a tentative agreement on May 17. On May 19, harvesters voted to go fishing but also to oppose any future attempts to institute RMS. Fishing commenced over the following weekend and continued until July 31 when all fisheries had exhausted catch quotas or already closed in accordance with the 2005 Crab Management Plan.

AN RMS Monitoring Committee was established, consisting of Reg Anstey as the nominee of harvesters, Derek Butler as the processors' nominee and Eric Dunne as government's representative. Their role was to assist and advise me in my evaluation of the pilot project and the development of my recommendations. My Terms of Reference are:

> *"The mandate of the Chairman of the Raw Material Shares Monitoring Committee is to evaluate the snow crab raw material shares pilot project and make recommendations to government on a future course of action.*
>
> *The work will consist of four components:*
> - *Monitoring of the system throughout the balance of the season;*
> - *Evaluating the RMS at the end of the season;*
> - *Recommending a future course of action to Government on the RMS system; and,*
> - *Recommending on such other related matters as may be appropriate.*
>
> *The Committee will take into account the views of all interested parties."*

This report is based on extensive fact-finding, discussions with harvesters and processors, assessment and analysis of conditions in the crab sector, and the fishing industry more generally, and input and advice from Committee members. The next section will review and evaluate the RMS concept from its first appearance in the early

1990s, the several attempts to introduce it over the next ten years or so, the experience with it in the shrimp fishery and its current status with crab sector parties. It will also address the rationale of government for the application of this concept to the crab fishery in 2005. It will cover, in general terms, the salient points of the views and positions of the industry on the RMS concept, as expressed publicly earlier this year. It will then identify and evaluate some of the more prominent and current claims for and against this concept by proponents and opponents. These tend to fall into the following main categories: the "real" intentions of industry and government; concentration or shift in control of the crab sector; industry stability, efficiency and rationalization; prices received and paid; marketing of crab product and length of operating seasons.

Section 3 will describe the results of the 2005 crab fishery that took place under the RMS arrangement. It will evaluate such factors as the length of the harvesting and processing seasons, the various (real and claimed) economic effects on processors, harvesters, plant workers and others, and the effect on marketing the 2005 crab production.

Section 4 will provide an overview of the development and status of collective bargaining in the harvesting sector of the fishing industry. This matter is one that is inextricably tied into the current dispute and the general state of affairs that exists in the industry today.

Section 5 will outline and critically review some of the main issues surrounding this concept and possible options available to government for 2006 and beyond. This also involves examining other factors related to the RMS issue, especially those of industry instability and inefficiency, rationalisation of capacity in both harvesting and processing, collective bargaining mechanisms, corporate concentration/control and excess processing labour.

The report will conclude with conclusions and recommendations in Section 6. Because I was appointed by the Premier, all of my recommendations will be directed to the Provincial Government; though at times I will be urging action that must be taken by the Federal Government.

2. A REVIEW AND EVALUATION OF THE RMS CONCEPT

This section will review the development of the RMS concept from its early theoretical beginnings and the growth of adherence to it in this province. It will then trace the events leading to the RMS project in crab and examine the various positions taken by supporters and opponents at that time. The two-year project in shrimp will be covered to ascertain how that contributes to the scheme of things. The positions of industry at the time of my consultations will then be outlined and the section will conclude with my analysis of the present state of the concept.

Development of the Basis for RMS

The theoretical basis for the use of individual raw material shares in management of the fish processing sector is similar to that advanced for use of individual catch quotas in the harvesting sector. In the latter case, limited entry achieved minimal success in controlling the tendency to over invest in vessels and gear and to overfish stocks. Overcapitalisation and excessive harvesting had been hallmarks of open-entry fisheries and fleets. By the early 1980s, it became obvious that limited-entry regimes, even with added capacity control rules, only restricted these problems to the limited number of licence holders but did not eliminate them. The search for alternatives to this approach resulted in the adoption of IQ-type measures or regimes. The objective became to change how harvesters behaved when using the resource by giving them a share of it.

The first Canadian example of this approach was the Enterprise Allocations (EAs) introduced in the Atlantic offshore otter trawl fishery in the early 1980s. Over the next decade and a half, a variety of fleets on both the Atlantic and Pacific coasts adopted similar regimes. By the late 1990s, most significant fisheries, except lobster, operated under some form of individual share arrangement. Some have various transferability provisions, but none on the Atlantic Coast allow completely free and unlimited sale of

individual shares. Most of the so-called ITQ arrangements have transferability or accumulation limits of two to three times an individual share, or require Ministerial approval, as with offshore groundfish EAs. The professional literature is rife with argumentations for and against the use of IQ/ITQ systems and the benefits and failings of them. A detailed elaboration of these here will serve no real purpose. It is sufficient to note that these claims range from IQs/ITQs being a complete solution to all fishery management problems to the complete opposite. In addition, they have not been in existence long enough to produce a complete second generation of operators. It would be then most of the claimed benefits or faults would appear.

The December 1992 report of the ad-hoc Federal/Provincial Government/Industry Tri-Partite Committee first introduced the concept of using individual shares in management of the processing sector in this province. This committee was struck in the early days of the groundfish moratoria to address the issue of processing sector rationalisation. It proposed the concept of individual plant production quotas as a possible option for management and rationalisation of the processing sector. The Committee described production quotas as being analogous to IQs/ITQs or EAs in the harvesting sector. It also envisaged transferability of production quotas as providing a self-rationalisation mechanism that would spare government the agony of deciding which operations must be eliminated. For a variety of reasons, neither level of government of the time acted on any recommendations of this Committee.

This approach was next proposed in the interim report of the Federal/Provincial Fishing Industry Renewal Board (FIRB) in April 1996. The FIRB indicated that several concerns of harvesters and plant workers required negotiations between parties before such a management system could be established. These concerns included too much control over harvesting activities by processors and the resulting lower prices. Processing workers' concerns centred on fewer total jobs and a transferring of work from unionised plants to non-unionised ones. A clear price setting system and IQs for fishermen were seen as preconditions of individual raw material shares.

A pilot project was conducted in the 1996 capelin fishery to test the raw material sharing system proposed in the FIRB interim report. Most parties, for a variety of different reasons, deemed the overall outcome of the pilot project unsatisfactory. These included a premature opening of the fishery, lower prices to fishermen, excessive dumping and high-grading, the actual setting of the shares, increased control of the fishery by companies and inefficient operators being maintained in the industry. As no evidence of benefits of raw material shares emerged from this experiment, the FIRB dropped the concept from its final report later that year.

In July 1999, the Fisheries Association of Newfoundland and Labrador (FANL) proposed that government establish a raw material sharing system in the inshore shrimp processing sector. At that time, the sector was characterised by over-capacity, high seasonality, intense competition for raw material, high levels of trucking, and poor quality landings and products. However, the proposed system did not materialise because licence holders could not agree on individual shares, although the Union had agreed to its introduction. A similar proposal by the shrimp sector in 2001 for the 2002 season was unsuccessful for much the same reason, as well as concerns that a sharing system would be used by government to justify adding more plants to the sector. Again, the Union was in agreement with the trial.

In April 2002, the Inshore Shrimp Panel recommended that both FANL and FFAW develop a raw material sharing system for the inshore shrimp sector. The Panel saw these shares as production caps similar to the landing caps on harvesters administered by FFAW. They would be enforced under the collective agreement for shrimp between the two parties. In this context, the Panel did not advocate the use of these shares for other than a means of controlling the processing frenzy that then existed in the inshore shrimp sector.

In October 2003, David Jones produced a report on collective bargaining arrangements in the inshore fishery sector. Amongst his many recommendations was

one calling for implementation of a system of raw material shares with the agreement of fish harvesters and processors.

The Report of the Fish Processing Policy Review Commission (Dunne report), submitted in December 2003, recommended a pilot project be conducted to determine whether any of the various claims for and against raw material sharing were actually valid. The Commission's view was, while no other concrete approach to dealing with operating chaos had been proposed, there were no instances where a sharing system in the fish processing sector existed to judge the claimed merits or demerits. This report also advised that when processor groups proposed any raw material sharing system for any species they should be required to satisfy the Minister that they represented almost all processors and that "no substantive and reasonable objections from plant workers and harvesters" existed or would emerge. The report also recommended that the pilot project on raw material shares should be monitored and evaluated by an independent review and evaluation committee against a set of performance criteria established by the Minister before commencement of the project.

The Lead-up to the 2005 Crab RMS

In releasing the Commission's Report on February 4, 2004, the Minister of the Department of Fisheries and Aquaculture called on processors to propose a pilot project to test the merits of this concept. However, he warned that there must be "*...no substantive and reasonable objections from plant workers and harvesters...*" There was also to be assurance of a fair price to harvesters.

However, a proposal from crab processors for a pilot project did not meet these two main tests. Too many processors disagreed with their proposed share; and harvesters would not even consider supporting the approach. The Minister advised industry in May 2004 that conditions were simply not right to attempt such a project in crab for that season. With the encouragement of government and the non-opposition of the FFAW, almost all crab processors agreed to cooperate in the sharing,

distributing and transferring of raw material in an informal arrangement for the 2004 season.

The same opposition still prevailed when the Minister announced government's intention to proceed with a two-year pilot project on crab RMS on March 2, 2005. The government was concerned about the level of instability that could arise in the crab sector *"...from overcapacity, a declining resource base, weakening markets, an underutilized labour force, the appreciation of the Canadian dollar against other currencies and an inefficient distribution system."* It felt that: *"The failure of government to find a solution to problems plaguing the sector would only result in uncontrolled plant closures, displaced plant workers, lower raw material prices and the potential for our reputation in the marketplace to be damaged."* This expectation of a very volatile situation and *"...the critical importance of the crab sector to the fishing industry and the economy of rural areas..."* led government to conclude it had *"...no choice but to act in the public interest and impose stability."*

Government decided to undertake the setting of shares based on the average of the last three years of production because processors couldn't agree and there were legal concerns about delegating ministerial powers. An arbitration process was provided for those who felt their initial share was inappropriate or improperly calculated. A regional processing balance factor required that at least 75 percent of the landings in each of four regions in 2004 be available for processing there in 2005. The arbitrator could refine the initial calculated share in a range of 90 to 105 percent. This could be based on historical purchases, economic viability requirements, legal agreements with harvesters, regional balance considerations and errors in Departmental data as well as individual extenuating circumstances. The arbitrator submitted the final shares to the Minister by May 9, 2005, who advised the processors of them shortly thereafter. These shares became a condition of the licence issued to each crab processing facility for 2005.

The disapproval of harvesters quickly became publicly apparent after the March 2 announcement and persisted until an agreement to start the fishery in late May. A war of words ensued between the Union, processors and the government that is displayed in press releases or statements of the next two and one half months.

In its first press release on March 3, ASP supported the Minister's decision to proceed with an RMS in crab but indicated *"...one area of concern for processors has to do with the Minister's idea of price setting based on after-the-fact auditing of actual sales invoices. This is seen as an unnecessary change from the current price to market formula, and very problematic administratively given the wide variety of products and marketing practices employed."*

In its April 7 release, ASP claimed that Raw Material Shares would: *"...help bring stability to the fishing industry; allow him/her to plan and optimize production performance; give value to the producer's enterprise; and permit talent, previously consumed in procurement and related crisis management, to be spent on marketing and other constructive initiatives designed to increase the size of the pie for the benefit of everybody."*

ASP also argued that prices paid harvesters would be a "full price" based on value. There would not be a minimum price and there would be no other payments. *"For harvesters, the pricing structure would be transparent, ...negotiated, and ...equitable for all harvesters."* They could still sell to the producer of their choice. *"The only significant difference for harvesters is that there would be no 'under the table' payments beyond the negotiated price structure, and there would be no so-called 'free market system for harvesters' in addition to the formal and legislatively-regulated collective bargaining system."*

RMS would benefit plant workers *"...because of the stability and planning that would derive from a sure knowledge of the amount of product in a given year that would be ascribed to their plant."*

Later, in an April 20, 2005 news release, ASP reiterated its support for the RMS pilot project and pointed out it considered the alternative to the government's proposal for crab to be an unregulated fishery that is totally determined by the free market forces. It claimed *"...given severe overcapacity and a declining crab resource, the consequences would be very dramatic."* These consequences were indicated as possibly including: *"No collective bargaining, and no Fishing Industry Collective Bargaining Act; Rapidly escalating prices followed by price collapses; Further serious damage in the market place; survival of the fittest, with forced bankruptcies, plant closures; Significant social and economic fallout; and, Fewer plants in fewer communities."*

The Union's press statement on March 11 took exception to several aspects of the RMS proposal and the reasons advanced by government for proceeding. These included the claimed chaos in crab price setting as being *"...a work of fiction propagated by the crab processors."* It pointed out that the Final Offer Selection (FOS) arrangement introduced in 1998 produced price settlements for six years without the strike/lockout system of previous years. Even when FANL was disbanded and FOS ended in 2003, prices were set in 2004 through collective bargaining and no "destructive price competition" occurred. The FFAW claimed the processors' tactics since 2003 had been to destabilise collective bargaining to force government into instituting RMS. The tactics also include dividing harvesters and plant workers by promising improved employment arrangements that are not possible from a declining crab resource. When RMS become transferable, jobs would be sold out from under some plant workers. Moreover, many harvesters, small vessels operators particularly, will lose leverage in respect of commercial services and the selling of their other less valuable species.

The FFAW also claimed at this time that there were other alternatives to an RMS system. These included *"...a full or partial auction, a return to final offer selection, a modified form of FOS, or doing nothing and let the chips fall where they may."* It also dismissed the claim that RMS was needed because of negative market and currency trends and an expected decline in quotas by pointing out that *"The price-to-market formula that has been in use in the crab fishery for years adjusts the raw material price in accordance with market and currency changes."*

Finally, in its June 7 press release, the FFAW added the following points of opposition: *"Production quotas - euphemistically called raw material sharing - are designed to limit the freedom of harvesters to sell where and when they choose. If implemented on a permanent basis they would greatly reduce the value of fishing enterprises by putting value on processing quotas. Money that had previously been used to buy crab from harvesters would now be used to buy up available crab production quota. And with fixed quotas, there would be very little incentive for processors to compete on the wharf for raw material."*

It also pointed out that *"Plant workers are also leery of production quotas, because it is an open secret that transferability of quotas is part of the plan for the long term. Plant workers are very concerned that the plant owner could essentially sell their jobs by transferring his production quota to another operator."*

Dissatisfaction on the part of some crab processors became evident over the course of April when several left ASP. Two companies filed requests for injunctions with the courts against the government's proceeding with RMS; these were all rejected. Several companies also filed statements of claims against the institution of RMS based on their individual circumstances. The courts ruled against all of these; however, two appeals are still pending.

Collective bargaining began on May 13 and an agreement was reached on May 17. The crab fishery finally started on May 22 with an overall agreement that included a negotiated starting price, the continued use of a price-to-market formula to determine

in-season changes, a post-season audit of prices actually received from the market, an RMS arrangement based on government imposed arbitrated shares and the establishment of an RMS Monitoring Committee. In spite of this eventual agreement to begin the 2005 fishery with RMS in place for one year, the gap between proponents, opponents and the government remained a wide one.

RMS in the Inshore Shrimp Fishery

The 2004/05 RMS arrangement in the inshore shrimp fishery had been put in place with support of harvesters and pre-dated the decision to proceed with the pilot project in the crab sector. Since many of the same harvesting and processing operators participate in both sectors, a review of the shrimp case may shed some light on the acceptability of this concept to the overall industry.

Raw material sharing in the inshore shrimp sector was instituted in conjunction with the Implementation Plan prepared by the Shrimp Industry Working Group (Working Group). This had been created by agreement between FFAW, FANL and DFA in mid-2003 after a period of disruption in the 2003 shrimp fishery. The Working Group's report was ratified by ASP; however, the FFAW did not take it to its members claiming they were now opposed to the plan. The Minister of DFA indicated that either the industry implemented the plan they developed or a shrimp auction would be established to let market forces repair the industry. After much debate, the majority of shrimp harvesters (with 3K operators abstaining) voted to accept the plan. The parties agreed to the arrangements on vessel scheduling, sharing, allocating and transferring landings (as well as other aspects of the plan) in an MOU and a Collective Agreement between shrimp processors and the FFAW for 2004 and 2005.

The Plan proposed a series of measures to improve the operational efficiency of the inshore shrimp sector, including such items as scheduling and trip limits, handling and transporting arrangements, quality and seasonality and pricing. The main purpose of these provisions was to co-ordinate landings with processing capacity. The

scheduling, transferring and distributing arrangements are the ones most relevant to the use of RMS in the shrimp fishery.

A Shrimp Coordination Center (SCC) was established to balance landings and processing capacity within and among geographic regions; to distribute, trade and transfer shrimp supplies between processors; and to coordinate vessel scheduling in combination with the administration of harvesting 'caps'.

Preference for allocating landings within a region would be based on the relationship between harvesters and processors and the transfer arrangements between plants as registered with the SCC. Landings from harvesters aligned with a particular processor would be directed to that processor whenever possible. Landings exceeding the capacity of that processor would be redirected to other plants within the region. Shrimp would be transported to the plant closest to the landing. Interregional trades and transfers would occur when landings exceeded processing capacity within a region.

The stated purpose of these arrangements was to ensure plants in closest proximity to landings would *"...process the raw material in a timely manner, optimize handling and transportation, improve quality and significantly enhance the overall value of the industry. Harvesters would benefit because of greater flexibility in trip limits (subject to quality considerations only), reduction in costs due to more efficient harvesting (fewer trips to catch the same quantity) and, increased trip limits would encourage larger vessels to fish in the spring, thereby improving the scheduling of smaller vessels during the summer period."* The benefits expected from such arrangements were seen to be significant and processors were reported to have *"...agreed in principle that upon negotiation, shrimp prices would be adjusted through collective bargaining to reflect a reasonable sharing of these benefits."*

However, the contract to establish the SCC was not finalized until late in June and it did not start operations until July 14, 2004. As well, Labrador did not take part nor did

vessels from Quebec; and one Newfoundland and Labrador harvester refused for privacy and confidentiality concerns. In addition, processors had become reluctant to allow SCC to schedule vessels with which they have arrangements; they took over scheduling their own aligned vessels in conjunction with SCC. Another departure from the original intent and the contract was that processors settled accounts for landings and transfers directly and not through SCC as initially called for.

A review of the 2004 shrimp arrangements by Burke Consulting Inc. concluded that some of the more relevant outcomes were the following:

- Quality of landings and of product was reported to be improved from previous years.
- After SCC started operations, serious glut problems were avoided.
- Some complaints existed about unevenness in scheduling and undue downtime for some harvesters. This varied between vessels aligned with different processors. Harvesters feel every one should be able to sail in their turn. This issue was described as serious enough to jeopardize harvesters' support for the plan.
- Non-aligned harvesters were not accorded the same priority in scheduling as those with firm commercial arrangements. This appears to apply to shrimp harvesters without a crab allocation.
- Some processors did not achieve their assigned shares, even though the total quota was taken for the first time in several years.
- Not all transfers of shrimp between companies were registered with SCC as required.
- The SCC was not provided information on processing activity that had occurred before its start-up.
- The SCC was not able to monitor the achieving of individual raw material shares for these reasons.
- Not all harvesters observed the various "hail-out" and "hail-in" requirements of the Agreement.

- Difficulties with implementing operational management decisions by the SCC board were also claimed.
- Provisions for penalties in the Agreement were not enforced in 2004.

In 2005, either through mutual consent or the absence of opposition, the SCC arrangement was dropped. While agreement between government and industry was for a 2-year pilot project, two of the largest shrimp processors, operating five shrimp plants, were no longer part of ASP and were now opposed to RMS in shrimp and crab. They were not interested in participating in the SCC for 2005 and their lack of participation would have made implementation of the overall model difficult. There were also outstanding bills to the SCC for 2004 and the general dissatisfaction of harvesters with the RMS for crab. Furthermore, FFAW members were not willing participants for 2005. Government had cited the shrimp RMS of 2004 as a qualified success, but the FFAW, which had been a reluctant participant even in that year, did not like this claim of a "successful" shrimp project to justify the application of RMS to crab. With no agreed arrangement to coordinate the overall operation of the RMS regime, the shrimp raw material shares issued in 2005 as a condition of license were really processing caps or maximum processing levels.

In 2005, processors initially undertook the scheduling of their own aligned harvesters' landings within these purchasing/processing limits. The latter were not reached as several processing operations stopped before most individual limits and the total catch quota were approached. Before these early shutdowns occurred, there was more downtime for individual harvesters and some (especially those without crab licences) had difficulties making any landings at all. Anecdotal accounts claim downtime in vessel scheduling in 2005 was variable amongst processors and ranged from 3-4 days to as high as 13-14. In these circumstances, and with some 17,000 mt of inshore shrimp uncaught as of mid-September, the DFA Minister advised processors that the processing caps were suspended for the reminder of the season.

Other significant elements of the plan also lapsed, making it impossible to evaluate the overall outcomes of the 2005 phase of the pilot project. This shrimp plan was meant to address severe structural issues in the sector. None of the major issues in the sector has been really dealt with; therefore, it is likely the inshore shrimp sector will continue to drift from crisis to crisis and to be yet another marginal commodity producing activity for its participants.

The following are my overall conclusions regarding the testing of RMS in the inshore shrimp fishery:

- Harvesters generally did not like the inequitable scheduling aspects of the 2004/05 arrangements. The scheduling of boats was likely more equitable in 2004 than in 2005 as the SCC helped narrow the gap amongst participants.
- Processors did not want an independent entity that oversaw the scheduling of harvesting, transfers and allocation of landings from aligned vessels and the payments of them.
- The departure of two major processors from ASP made this problematic in any case.
- Harvesters did not like, or approve of, the power RMS gave processors in the shrimp sector. They claimed that once the RMS was in place relationships with processors deteriorated.
- For a variety of reasons, all parties effectively walked away from the arrangement in 2005. Several significant processors were not involved, individual processor/harvesters arrangements arose, some operators ceased production early and the government suspended the limitation of individual shares in mid-September.
- The shrimp sector is almost the exact opposite of the snow crab sector: a high level of resource availability and a global oversupply of product versus a declining resource base and low levels of competing supplies from other countries.
- Both sectors suffer from much the same operational problems: temporary

landing gluts, poor quality output, inconsistent and often below-par returns from the market place, uncoordinated movement of raw material over considerable distances etc.

- Both sectors have acrimonious industry relations that did not improve during the two-year pilot project in shrimp or the 2005 crab RMS.
- Overall, I find it difficult to see any justification for continuing an arrangement that lacks the support of most harvesters and at least several significant processors. It is equally disconcerting to observe the general lack of discipline on all sides that still exists in this troubled sector.

The Current Industry Views

The current claims for and against the RMS concept revolve around the "real" intentions of industry and government for industry stability, efficiency and rationalization, concentration or shift in control of the crab sector, the effect on prices received and paid, and the length of operating seasons.

During my consultations, the main concerns for the majority of harvesters are much the same as they have been for the past decade. These are centred on the increasing control of the harvesting sector by processing companies. They see this only resulting in lower prices paid and fewer jobs overall. Generally, plant workers concerns and positions are influenced by the particular circumstances at individual plants, such as loss of vessels to other operators or the shipping away of landings for processing elsewhere. Most harvesters are still convinced they will be told when to fish and where they can sell their catches. As a result, some fear they would not be able to fish certain quotas in the only season they may be able to operate, and that, in some cases, they will be denied sales by processors who no longer need or can process any more raw material. They also fear a lessening of commercial services from processors and a "downloading" of certain operating costs. The experiences in the shrimp fishery of 2004-05 do nothing to dispel these fears.

In particular, many harvesters believe there currently is a scheme by processors to de-stabilise collective bargaining and weaken the union by creating a condition of continuous chaos, especially in crab and shrimp. They view the current unsatisfactory state of collective bargaining arrangements as one indication of this strategy. They feel that a return to something similar to the FOS system of 1998-2003 would resolve many of the instability problems now caused by delayed starts to fishing activities, the resulting harvesting and processing frenzy and the inevitable damage to market returns and incomes of all industry members. They support maintaining competition in the industry while ensuring that the price setting system produces timely starts to fishing activities. They feel this would resolve many of the recent industrial relations issues.

In the majority, they remain opposed to the further application of RMS systems, not having been convinced there is anything in it for them. Above all else, they see this concept as only resulting in less revenue for harvesters. They believe this will occur by processors gaining the upper hand in the setting of fish prices and by less money being available to pay for fish because the purchase of transferable RMS will become a new expenditure and cost. In reality, the opposition of harvesters to this concept has increased since 1999 when shrimp fishermen first agreed to a trial implementation of RMS in that sector. The basic position of some harvesters is that they must be part of the designing of such systems and involved in the development of the various aspects of them.

Earlier this year, it appeared most major crab and shrimp processors favoured RMS as the best or only viable means of achieving industry stability, efficiency and rationalization. The supporters of RMS still claim it would bring efficiencies to the sector and produce increased returns for all because time and effort now spent acquiring and ensuring raw material supplies would be directed to improving operations, product development and marketing. They also feel this is a tool that could allow the industry to rationalise in a controlled manner and prevent chaos that would arise in the bloodbath of unrestrained competition they have been predicting

since 2003. They also look to RMS to provide a more rational or orderly operating season by removing the need to process as fast as possible for fear of losing raw material to other operators.

The supporters also believe the FFAW has not given crab RMS any opportunity to be tested, even to the point of refusing to negotiate when the concept was raised for discussion. They feel that, as a result, the concept has never been properly debated or looked at on its own merits. They also feel the government botched the implementation of RMS this spring by the manner in which it calculated shares, especially the loss of share by some plants because of past transferred landings and the treatment of new entrants. They think that this will not proceed in the current absence of cooperation in the industry. They believe that without RMS in 2006, the uncontrolled competition for supply will result in the crab fishery shutting down after two weeks because companies will not be able to continue to pay the going prices.

The industry ranks now appear seriously divided; several significant players have clearly withdrawn previous support for RMS in both crab and shrimp. There are a variety of declared reasons for these withdrawals but the more significant ones are the perceived or real loss of position in the industry from the calculation of individual shares, possible surrender of control over aligned vessels and the implicit application of this system for industry rationalisation. The main reasons of many processors for supporting the implementation of RMS were that it would be primarily a means to achieve annual "peace and stability" and to add value to their operations.

There also is a concern by some processors without crab or shrimp licences that the institution of RMS will take place in the more lucrative sectors first. They fear this will allow those processors to then encroach on the less valued species and gain control of those sectors as well because of their stronger financial position from having gained RMS in the more lucrative species first. This is another version of the concerns expressed by harvesters regarding increased corporate concentration in the industry.

A Current Evaluation of RMS

In my view, supporters of RMS have not made a convincing case for its application in the crab (or the shrimp) sector. To justify this system as a means of achieving seasonal operating stability is one thing; to intend it really as a rationalisation mechanism that would provide compensation to those exiting the industry is another matter entirely. Apart from raising fears of corporate concentration and predatory take-overs, transferability of raw material shares would also create a perception (and a reality) that these are quotas assigned to each processing community. This would render their use in removing capacity very problematic for government; it would become the obvious target of communities who would see "their" RMS being acquired by, and moved to, other locations. In my view, this means these RMS would never become transferable, thus making them un-usable as a rationalisation measure, and drastically lowering the potential value they are envisioned as adding to company assets.

Moreover, the claim of producing annual operating peace and stability would also run afoul of two pertinent facts. The present lack of a timely price setting mechanism almost definitely ensures that early starts to the two main fishing activities will not occur in the current climate of mutual distrust. As well, the various soft-shell conservation measures, that are now a continuing feature of crab management, will override any tendency to the slower pace of operations that was to be the main hallmark of RMS in that fishery. DFO advised harvesters in its 2005 Backgrounder to the Crab Management Plan that ***"There will be no season extensions; Individual Quotas (IQs) are not a guarantee that the fisher will land that amount of crab."*** The experience of 2005 is a perfect example of the outcomes that now flow from a late start to the fishery and a rush to harvest and process for fear of being shut down by soft-shell closures. In essence, there now are no operative fishing IQs in the snow crab fishery. The fact that this is the "bread and butter" activity that supports many other operations only re-enforces this tendency to rush to harvest and process. It would not be removed by RMS.

Therefore, I find these two main elements of the poorly argued case for RMS in crab to fail because of these over-arching facts. I am likewise not convinced of other parts of the overall argument as to why RMS should be instituted in crab. I will address just a couple of these to make the point. I am completely unaware of any performance record of this industry that would support the claim that the time and expertise freed up by RMS will improve product development and marketing efforts. We remain almost exclusively a commodity producing industry that cannot point to any great record of accomplishment of product development or secondary and further processing of raw material. This has been the case over a long period, most of which was characterised by longer operating seasons than we can now ever achieve in crab. There are now at least seven months of downtime in the crab sector; some of that must be available for these activities even without RMS.

A related claim is that RMS would allow industry to concentrate on other useful activities "to grow the size of the pie" for all to share. The problem I have with this point is that examples of such prospective actions are sparse. The industry will remain a price-taker rather than a price-setter in the global seafood market. While we may be a major supplier of snow crab we are not so in seafood overall. Our ability to squeeze more from the markets is limited by what consumers are willing to pay for the type and quality of our products. When we exceed an acceptable price level, as we did again in the case of crab in the US in 2004, demand shifts off to other seafood alternatives until the supply and demand forces in the market make the necessary corrections. Generally, any processor's individual share in almost all commodity product markets is mainly determined by the amount produced and not by any specific marketing strategy, initiative or brand reputation.

In addition, I must comment briefly on ASP's fondness for selectively quoting Dr. Scott Matulich of Washington State University in support of their case for RMS. The specific point they reference is his conclusion that granting IQs only to harvesters "*...will result in an unintended and unnecessary transitional, and* ***possibly long run,*** (my

emphasis) *wealth transfer from processors to harvesters. In the long run, processors generally will be forced to exit the industry without compensation, and remaining processors can be either better or worse off."*

Dr. Matulich's basic assumptions and rationale for these conclusions are as follows: The transferable Individual Fishing Quotas (IFQs) rationalise the fishing fleet and make it smaller and more efficient. Processing plants then have excess capacity that was initially installed to handle glut landings from the open derby style fishery conducted by the larger pre-IFQ fleet. Prices are bid up to acquire sufficient supply from the smaller number of harvesters for this excess plant capacity. Without Individual Processing Quotas (IPQs), entry to the processing sector remains open and new buyers and processors enter and further reduce returns to the original surviving processors. The share of the surviving processors from the sales of the fishery is reduced, while that of harvesters increases. On the other hand, exiting harvesters have been fully compensated when IFQs were traded but processors have no such recourse. The fishing season is "elongated" as harvesters no longer have to rush to acquire their share of the quotas thus creating further strains on the excess processing capacity. He further concludes that fishing and processing should both be given IQs at the same time in **future rationalisation programs** but that existing IFQ regimes should not be undone because investments have already been made under existing rules and to change them in mid-stream creates another group of losers.

The actual situation in the crab fishery for which ASP uses Matulich's analysis to justify RMS is the complete opposite of his basic assumptions: The Newfoundland and Labrador crab IFQs are non-transferable. They also have not rationalised the fishing fleet, as accumulation/combining of IQs is not permitted; only take-overs and continuance of existing enterprises are now possible. No inshore fleet has become smaller in number through transferable IFQs, with the exception of the original 4R shrimp fleet. Current plant capacity is a function of additional licences issued in the late 1990s and individual additions to plant capacity to secure market share. It was not in response to glut landings in an open entry crab fishery where the fleet has since

been rationalised and those who left were compensated through the sale of transferable IQs. Entry to the provincial crab processing sector has always been limited even though additional licences have been issued on occasion. In addition, fishermen cannot ship their crab landings out of the province, and landings in Labrador must be processed there. IFQs in crab are now inoperative and will not prolong fishing seasons because of soft-shell closure concerns.

Matulich's analysis is based on the U.S. Pacific Northwest and Alaska where there are definite differences in industry structure, fleet configuration, regulatory approaches and policy objectives from this province. Also, I understand that his conclusion of simultaneous introduction of IQs in harvesting and processing being necessary so that neither party is worse off than before is based on certain basic principles of welfare economics. These principles and argumentation can be extended to justify providing similar protection for crewmembers, fish processing communities, other special interest groups and areas. This is where the Alaska Crab Rationalisation Program has gone with Matulich's input. That Plan provides simultaneous and multi-layered IQ allocations to harvesters, processors, crewmembers and community development. Fishing IQs are also divided into portions for processing at sea and for landing on shore. There is an additional requirement for landing certain portions of IQs in two processing regions. Moreover, some specified crab processing communities have a right of first refusal to acquire any IQ that may be put up for sale before it can be transferred away. Selective use of this type of rationale to justify processing IQs (RMS) might develop into a case of "being careful what you wish for". In effect, this rationale could be used to justify far more government intervention in the fishery than processors would ever support. However, I do not think that this government is likely to adopt the relevant principles of welfare economics as a basis for its fish processing policies.

While I have found the main elements of the processors' case for RMS to be unproven, I also must observe that many of the adverse affects that harvesters and plant workers claim will definitely flow from RMS are not substantiated either. Many of

them probably would happen if there were absolutely no constraints or limitations placed on the functioning of an RMS regime. There surely would be such measures; either imposed by government as part of its public policy for the fishery sector or negotiated between industry parties in the case of those that fall in the category of commercial arrangements. Simply to take a position that the concept is not open for discussion or negotiation is to ignore or miss the opportunity to determine what gains are possible from an initiative that the processing sector clearly wanted.

An underlying factor in the Union's rejection of RMS and their earlier ambiguous approach, if not outright opposition, to accreditation is rooted largely in the concern of some boat owners, particularly in the larger fleets, that all of this would somehow threaten the bonus payment system. As well, the circumvention by some processors of the Federal Government's Fleet Separation Policy has given them, in the minds of some, an unfair advantage in the implementation of bonus payments. The fact that the negotiated price is a minimum one has in the past given processors latitude to indulge in this practice; and has contributed to general acrimony and the inability of the parties to achieve more success in collective bargaining. In 2004, an upward adjustment in the "price-to-market" formula reduced the opportunity of bonus payments; this adjustment was continued in the 2005 collective agreement for crab. Some of these fears go to the very centre of relationships between harvesters and processors; some aspects of which normally could be handled in collective bargaining.

Summary

Overall, I find the concept of RMS to be now a very marred and problematic notion that has more downsides than positives to commend it as an instrument of public policy. In spite of the 2005 crab fishery, it remains an untried approach, except for what became an abortive attempt to apply it in the shrimp fishery. There, in essence, all parties effectively abandoned it as a management and stabilisation mechanism and appear to have opted for the same individual processor/harvester arrangements

that were so decried in the past. It now has less support from harvesters, plant workers and processors than even a year ago. It was badly promoted by companies and too quickly adopted by government against obvious and strong opposition. If supporters had waited first to see how it worked in shrimp, it might have been easier to implement it in the crab fishery. Harvesters' support for RMS in both shrimp and crab has been eroded by how the actual attempt to apply it in shrimp turned out and the way in which it was then imposed in crab. All of this contributes to it now being an impractical proposal to use for almost all the reasons advanced in support of it.

All recent recommendations to government on RMS or similar systems, either implicitly or explicitly, envisaged the terms, conditions and general parameters being negotiated by industry members. In light of the 2005 crab RMS experience and the outcome of the two-year project in shrimp, I believe individual raw material sharing arrangements in the processing sector are likely to re-emerge only if the various parameters of them can be negotiated and enforced as part of collectively-bargained agreements. I say that on the premise there must be something in this for everyone involved; otherwise, such arrangements will never come to pass.

This is an even more complex matter than IQs in fish harvesting because the processing and marketing of raw material are not quite the same activities as fish catching operations. It is also pertinent to note that inshore sector harvesting IQs were designed, agreed to, implemented and monitored by harvesters themselves because DFO considers such arrangements not necessary for conservation. It only supports them through conditions of licensing and is really only concerned with enforcing the global quotas for such fisheries. In the case of crab RMS, several significant processors did not even agree on the individual shares that were proposed for them.

The theoretical basis of the argument for RMS is essentially the same as that which is used to justify IQ/ITQs in the harvesting sector. While these usually produce an immediate reduction in the pace of harvesting, there are often exceptions such as we

are now seeing in the crab fishery. As well, the jury is still out on the overall and long-term effects of IQ/ITQs, especially whether they produce all or any of the claimed positive benefits. In addition to increased economic efficiency, improved adherence to conservation is claimed as another feature of these regimes. This may not always happen as witnessed by the almost complete switch to gillnet fishing when IQs were adopted in the 3Ps cod fishery. While this may have been a logical decision by harvesters because the only real price differential was based on fish size, it meant the fishery concentrated on a narrow range of the larger and more productive year classes. Ironically, this increased concentration of these year classes is apparently the reason for the expected reduction in that quota for the next fishing season.

There are only two outcomes that can now be definitely expected from RMS in any part of the processing sector. The first is that it would reduce some of the predatory actions now involved in "the competition on the head of the wharf" for raw material supplies. The second is that it would add some value to the assets of processing enterprises. In the first case, it would reduce, but not eliminate, the level of extra payments that some harvesters will be able to extract from some processors. In the second, it would add value to a processing enterprise because of the assured share of supply but only to the extent that some other processor or investor is willing to pay to continue operating in the licensed location.

3. RESULTS OF THE 2005 CRAB FISHERY

This section will examine the results of the 2005 crab fishery in relation to those of 2003 and 2004 and of previous years where information permits. This will be done on the basis of various indicators including changes in length of fishing season, opening and closing dates, levels of quotas and catches, fishery management measures, prices, markets returns and employments levels. The extent to which these differed in 2005 from previous years will be assessed to identify the effects, if any, of RMS on this year's fishery. These factors will be used in the absence of any performance criteria having been set in advance for this pilot project.

The Fishing Operations

The main parameters of crab harvesting operations in each of the last ten years are shown in Table 4.1 on the following page. The earliest legal opening date in the last three years occurred in 2005 because that was the earliest DFO had announced the annual Crab Management Plan since 2002. The latest actual start time in the last three years also occurred this year because protests against RMS delayed the reaching of a collective agreement. The start of the main fishing season also became progressively later over the last three years and are the latest since 1996 and 1997. In 1996, the start was one month later than in 2005 and in 1997, it was two months later. It is significant that these really late starts occurred before and after the use of FOS to settle crab prices.

This later start, combined with earlier fixed closing dates, reduced catch quotas and more stringent rules for soft-shell closures, produced the shortest crab fishing season in many years, if not ever, in many fishing areas. Some fleets in 2HJ were permitted only a maximum of a four-week fishery and all harvesting activities were finished there by July 6. Closures under the new soft-shell crab protocols and the filling of individual fleet or area quotas meant all harvesting in 3K was finished by July 22. In 3LNO, all quotas were taken on or before its fixed closing date of July 31. Activities in 3Ps and

4R ended at the pre-set closing date of July 15 with quota remaining in the water.

Table 4.1
Selected Harvesting Parameters, Snow Crab, 1996 to 2005

Division/Year	Legal Opening Date[1]	Start of Main Fishery[2]	Last Closing Date[3]	Total Quota (Mt.)	Total Catch (Mt.)
1996	May 16	June 18	Aug 25	37,664	38,069
1997	April 10	July 21	n/a	44,515	44,676
1998	April 01	April 15	n/a	48,724	52,049
1999	April 14	April 15	Nov 8	61,561	68,670
2000	April 13	April 04	Nov 15	55,359	55,428
2001	April 18	April 21	Aug 31	55,256	56,460
2002	April 06	April 08	Oct 22	56,981	59,321
2003	April 21	May 03	Sept 09	56,250	58,362
2004	April 23	May 06	Oct 15	53,590	55,658
2005	April 09	May 22	July 31	49,978	43,976

Notes: (1) Legal start date as set by DFO
(2) Start date under Collective Agreement
(3) Last area quota closing date set by DFO

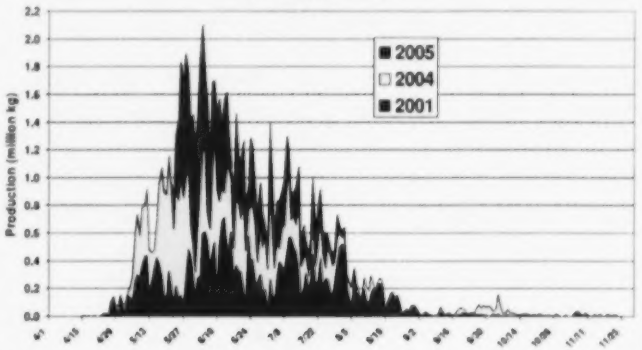
Source: DFO; FFAW

The 2005 season also saw another decline in total annual quotas, continuing the trend downward from the peak of 61,561 mt in 1999. Total quotas are now almost 20 percent below that peak level; most of the decline having occurred in 2J (-74%), 3K (-29%) and 3Ps (-48%). Moreover, this was also the first time in some years that the total assigned quotas were not reached. Since 1996, the final catch exceeded total allocations by varying amounts each year until 2005. This year, the total harvest fell about 12 per cent (6,000 mt.) short. Most (4,160 mt.) of the absolute shortfall occurred in 3K where soft-shell crab closures curtailed fishing opportunities; 3Ps and 4R accounted for a shortage of 1,900 mt. (The other two main quota areas together contributed an over-run of about 300 mt.)

One of the consequences of these new fishery management measures, coupled with the delayed start to the main fishery and claimed needs to generate cash flow in a deteriorated market, was a faster than usual pace of harvesting and processing in the

early weeks of the season. As Chart 4.1 shows, by the middle of June the total level of daily production was almost three times the rate of 2001 and almost twice that of 2004. By the end of June the daily rate, while decreasing, was still higher by the same relative levels from 2001 and 2004. The pace of activity continued to decline for the rest of the season as quota and soft-shell closures began to affect both the rate of total harvest and production. By mid-July, production rates had fallen back to the comparable levels of 2001 and 2004 when earlier starts to the season had taken place. The season would end two weeks later with most quotas already closed and the total catch and output some 12 percent below the level of 2004. This all occurred in a season that started two weeks later and ended four weeks earlier overall than in 2004.

Chart 4.1 Daily Snow Crab Production
2001, 2004, 2005



Markets and Prices

Since 1998, crab collective agreements have contained a provision to use a "Price-to-Market" Formula to determine changes from the agreed starting price during each crab season. An independent marketing analyst provides and analyses the necessary data in regular market update reports. These data provide some useful insights into annual and intra-year trends in the crab markets that influence returns to processors and the price received by harvesters.

Table 4. shows the last three years' data on the pertinent parameters of the formula. The FOB prices at Boston for truckload lots of Combos and U.S. Sections and contract prices for Japanese Sections together with their "Market Shares" (really

percentages of total production) are used to calculate a "Market Price Factor" (MPF) in US dollars. That is then converted to Canadian dollars by the current exchange rate. The resulting "Market Price Factor" determines the "Reference Price" for landed crab at the start of the following week from a collectively bargained formula table.

Table 4.2
Selected Market and Price Indicators, Snow Crab, 2003 to 2005

	2003 Season		2004 Season		2005 Season	
	Start	End	Start	End	Start	End
Market Prices						
Combos ($/lb.)	8.45	10.15	9.65	9.65	8.95	8.50
US Sections ($/lb.)	4.10	4.25	4.25	4.25	3.23	3.24
Japan Sections ($/lb.)	3.85	4.05	4.35	4.35	3.20	3.25
Market Shares (%)						
Combos	2.85	1.49	1.03	1.42	1.55	1.44
US Sections	71.40	73.37	66.32	64.73	65.75	62.07
Japan Sections	25.75	25.15	32.65	33.85	32.70	36.48
Market Price Factor						
$US	2.41	2.52	2.65	2.66	2.00	2.02
Cdn $ Exchange	1.42	1.39	1.38	1.28	1.26	1.22
$Cdn.	3.44	3.52	3.66	3.39	2.53	2.45
Reference Price ($/lb.)	2.12	2.18	2.47	2.22	1.45	1.39

Source: Crab Market Update- Seafood.com

These market price data reflect the seasonal and annual fluctuations in market demand for the selected product types. The trend from the start of the 2003 season has been an upward movement that continued to the end of the 2004 season but which then declined dramatically by the start of the 2005 season. This upward price movement proved too much to sustain demand in the U.S. market. Indeed, the significant decline between the end of the 2004 season and the start of the 2005 season continued with no real overall recovery by the end of this season. The normal market reaction when prices reach unsatisfactory levels is for restaurants to remove

crab from menus and for major promotions to cease. This continues until prices decline to a point that will clear inventories and then stabilise at a level more acceptable to consumers.

This latest market backlash began in the 2004 season when a higher price was achieved for sales to Japan and an increasing percent of production was then directed to that market. This forced the prices for US sections upwards over the course of the 2004 season. By the end of 2004, shipments of sections to Japan had increased by 33 percent (over 2003). Over the same period, the percent of section production going to the US fell by some 15 points. Demand in the Japanese market remained more buoyant than US demand in 2005, though at lower prices than in 2004. This latest decline in US demand for snow crab may not be reversed until sometime in 2006.

Table 4.3
Trends in Market Price Factor and Port Prices
(Season Start and End Values)

Year		Market Price Factor		
		$US	$Can	Port Price ($C)
1998	Start	1.24	1.78	.80
	End	1.39	2.14	1.08
1999	Start	1.30	2.64	1.48
	End	2.21	3.24	1.96
2000	Start	2.38	3.50	2.16
	End	2.41	3.70	2.32
2001	Start	1.99	3.13	1.88
	End	1.93	2.96	1.74
2002	Start	1.91	3.03	1.80
	End	1.98	3.14	1.88
2003	Start	2.41	3.44	2.12
	End	2.52	3.52	2.18
2004	Start	2.65	3.66	2.47
	End	2.66	3.39	2.22
2005	Start	2.00	2.53	1.45
	End	2.02	2.45	1.39

Source: Crab Market Update-Seafood.com

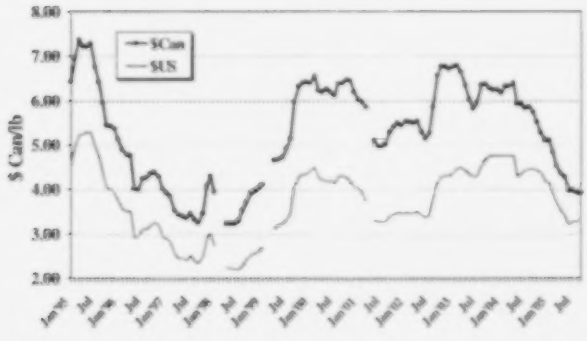
The rise in market prices through the 2003 and to the end of the 2004 season produced an increase in the Market Price Factor (MPF) (in $US) of some 11 percent over that period. However, by the start of the 2005 season, this indicator was down almost 25 percent from the peak levels of 2004. Over the same period, the Canadian dollar rose against the U.S. currency by some 13 percent. As a consequence, the MPF in $Cdn fell 33 percent by the end of the 2005 season from the peak of 2004 (the negotiated 2005 "first trip" price was 35 percent below the beginning port price of the previous year). Therefore, even if the demand backlash had not occurred in the U.S.

market, port prices would have been lower in 2005, at least in proportion to the appreciation in the Canadian dollar.

The increased attempts to make early sales in 2005 helped prevent market prices from improving during the 2005 fishery. The aftermath of high prices in 2004 and allegedly deficient product also contributed to the depressed prices and demand levels in the US market. The late start to the Newfoundland and Labrador fishery allowed product from the Maritimes and Quebec to enter the US early in the 2005 season; this also helped prevent any early price recovery. In a declining US market, prices previously obtained for sales to Japan could not be maintained in 2005.

The conditions that prevailed in the snow crab markets from 2003 to 2005 have re-appeared on a somewhat regular basis for at least the past ten years. Table 4.3 and Chart 4.2 show these trends. The trend that re-occurs is two to three years of a rising market, followed by about a two-year decline, before a rising market appears again. The Alaska fishery became less of a factor after 1998 when quota cuts meant lower supplies from that source. The upward price movement of the next two years was caused by the lower overall supply and strong market demand that had been built up during the 1996-98 period of high supply and lower consumer prices. However, toward the end of the 2000 season the market price had reached a level that consumers were no longer willing to pay. This complete sequence of events would be repeated twice, and for much the same reasons, over the next five years. A period of reduced market demand and prices occurred in 2001 and 2002; another

Chart 4.2 Monthly Prices for Frozen Crab Sections (5-8) ounce in U.S. Markets 1995-2005



rising market existed in 2003 and most of 2004. This changed to a downward movement again in late 2004 and all of 2005. This latter downturn in market demand and prices was coupled with a rise in the Canadian dollar; further contributing to the decline in market returns and the port prices received by harvesters.

Some of the more significant snow crab market factors and conditions that emerge from the data in Tables 4.2 and 4.3 and Chart 4.2 can be summarized as follows:

- Demand, prices and returns have been quite cyclical over most of the last decade. Rising demand generates increasing market prices that eventually limits the willingness of consumers to continue buying crab at such prices. The market then goes through an adjustment period where prices are reduced and returns to processors and harvesters decline accordingly.

- In the late 1990s and early 2000s the exchange rate contributed favorably to total returns from the market; at times masking the downturns in demand and prices. During the current market decline a rising Canadian dollar has added to the reduction in returns. Most of the significant in-season changes in crab port prices, especially over the last five years, have been the result of changes in the exchange rate rather than in market prices.

- Generally, little of the major market changes occur during the increasingly shorter crab fishing seasons. Market adjustments (both upward and downward) seem to begin between processing seasons and then continue until a stabilized market is reached.

- The US market price for 5-8 ounce sections has fluctuated up and down over the past ten years. Since 1996, there has been a noticeable downward trend in market returns and prices. Since the adoption of FOS in 1998 there has been a very slight upward trend. These market prices are currently at a level that is only marginally higher than in 1998.

- The crab sector, from 1998 to early 2004, enjoyed high market and port prices,

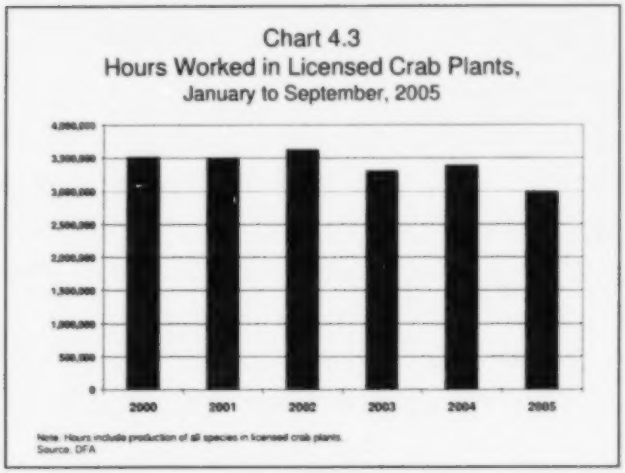
high levels of resource abundance and favorable exchange rates. All of this changed downwards in 2005.

In 2005, harvesters received an average of $1.45 per pound compared with an average of $2.45 last year, equivalent to a 41 percent drop. Port prices were at their lowest level since 1998. The market value and the landed value of snow crab will be significantly lower than in 2004. DFO estimates landed value to be $139.7 million, compared to a landed value of $300.6 million in 2004. This suggests that final product value will be $250 million in 2005 compared to $470 million last year.

On balance, I can find no evidence or convincing argument that RMS had any positive or negative effect on the 2005 decline in prices and market. The seeds of this decline were actually sown in 2004 even though most processors had agreed to cooperate in the distribution and transferring of crab landings during that season. The series of fluctuations in market and port prices, which have produced three major downturns since 1995, have been caused by a variety of reasons. These include often uncoordinated harvesting, processing and marketing activities.

Crab Processing Employment

Chart 4.3 shows the effects on total hours of employment in one of the shortest crab processing seasons on record occurred in 2005. While the total numbers of workers was much the same as in 2004, they worked some twelve percent fewer hours during the main crab processing season. While number of hours worked was the lowest in at least the last six years, it still takes significant hours to process the current daily or weekly volumes of crab. The high daily and weekly volumes of landings in June and July required substantial processing labour because plants operated at full capacity working around the clock. This resulted in a concentration of work in a shorter period of time and crab workers qualifying for EI with about the same number of total hours but substantially less weeks from crab processing. This shorter working season creates a double whammy for EI qualifications: the "divisor rule" means lower benefits can be received for a shorter period.



Luckily this year some of these crab employment effects were offset in some plants by improved employment opportunities in the processing of pelagic species, especially capelin and mackerel. Both of these enjoyed better market situations than has been the case for some years. In many cases, the take-up on the government's Crab Workers Support Program was less than expected. However, the hardest hit area was Labrador, where pre-set closing dates and 20 percent lower locally available raw material significantly shortened the crab processing season. It was not the beneficiary of these improved pelagic opportunities. These are not likely to ever have much effect on the Labrador problem and are really an opportunistic event in most cases.

Crab RMS in 2005

The institution of RMS in the crab sector in 2005 was intended to provide "peace and stability" in what was expected to be an otherwise chaotic season. The government was concerned about the level of instability that would arise from the declining resource, weakening markets, excess processing labour, a rising Canadian dollar and an inefficient distribution system. Recent seasons were marked by intense "head of the wharf" competition for raw material and a rush to harvest and process. The negotiated higher starting price for 2004 and an alteration in the "Price-to-Market" formula reduced the potential of making "bonus payments" by increasing the share of increasing markets prices that went to harvesters. This, together with the informal

arrangement to share and distribute raw material amongst most processors reduced some of the former effects in 2004.

The 36 active crab facilities averaged 95 percent of their allowable RMS, with 29 plants reaching over 90 percent of their assigned RMS. Two plants processed less than 70 percent of their RMS. One ceased production due to quality issues while another did not get sufficient raw material, likely due to 3K closures.

In 2005, crab prices were again set through regular collective bargaining between the FFAW and individual companies. A negotiated start price of $1.60 applied to the first trip and then the negotiated "price-to-market" formula picked up the effects of reduced market demand and prices and the appreciating Canadian dollar. Processing and selling activities in the 2004 season caused the lower market situation that existed at the start of the 2005 fishery. Market indicator prices remained virtually unchanged over the course of the 2005 season at about a dollar below the 2004 close. The landed price for the first trip started at 62 cents below the 2004 close and declined another 21 cents by season's end. Almost this entire decline was due to the rise in the Canadian dollar over the course of the fishing season. RMS had neither a positive nor a negative effect on the level of prices received in 2005; these were caused solely by market reaction to high prices paid in 2004 and the rising value of the Canadian dollar.

The Canadian dollar continued its rise in line with international currency parameters; snow crab production in Newfoundland and Labrador has no influence on these but is affected by the changes in them. While "on-the-wharf" competition to gain increased raw material supplies may have been reduced by RMS, the rush to harvest and process was not. The late season start, a need for cash flow and concerns about potential soft-shell crab closures (combined with early fixed closing dates), resulted in one of the shortest processing seasons on record. The continuing negative effects on processing workers have already been described. With the current declining crab

resource and the excess processing capacity, RMS will do little to resolve this problem of excess processing labour.

One positive aspect of this season's crab RMS project was that the clearing-house arrangement instituted for transfers of raw material acted as a "glut desk" by facilitating the movement of crab between plants with temporary surpluses and those with shortfalls. Under this arrangement, these transfers were required to go to the nearest plant in need of raw material. This would have reduced some of the uncoordinated trucking that has taken place in the past. In total, processors received some 7.3 percent of raw material processed by transfer and the remainder by direct purchases. It is not known how much of the latter amounts were trucked and over what distances.

In summary, the main outcomes of the crab RMS system in 2005 were improved coordination of raw material distribution from processors with temporary surpluses to those with shortfalls and some unknown lessening of "on-the-wharf" competition, which had been already achieved to some extent in 2004. There was probably some reduction in the trucking of crab, but I cannot verify the extent of it. The rush to harvest and process remained a feature of the fishery; any stabilising that may have occurred in the market occurred from its built-in adjustment processes. It did not improve operating efficiency or lengthen the duration of the processing season and of plant employment. It is highly unlikely that crab RMS will accomplish any of these positive outcomes while the sector faces ongoing soft-shell management measures, a declining resource, excess processing capacity and surplus labour.

It is also likely that the 2005 season would have been delayed at least as late as 2004 even in the absence of the proposal for RMS. The alleged broken promises to pay bonuses in 2003, and the demise of FANL and FOS, translated into a very difficult collective bargaining scene in 2004. It is by no means clear that the level of mistrust caused by this would have diminished by 2005, even in the absence of the RMS

project. Indeed, the indications are that this mutual acrimony remains at a high level; and could be a significant factor in creating further instability in 2006.

4. COLLECTIVE BARGAINING IN THE INSHORE FISHERY

This Section will review the development and status of collective bargaining in the inshore fish harvesting sector. The provisions for setting fish prices and related matters have long been a crucial part of the framework in which this industry operates. They are inextricably tied into the present RMS issue and the overall state in which the industry still finds itself.

For almost a decade, intense debate, significant changes and continuing disagreement have marked the functioning of the collective bargaining process for harvesters and fish processors. Since 1997, the legislative provisions for collective bargaining between harvesters and processors have been the subject of two major studies and reviews and several legislative amendments. Almost all of the recommendations of the first major review were implemented and used for some six years. Few, if any, of the recommendations of the second major review have been yet acted on.

The Beginnings

The provincial government passed the Fishing Industry Collective Bargaining Act (FICBA) in 1971 thereby granting harvesters the right to regular collective bargaining for fish prices and related matters. The proposal to government to establish collective bargaining in the fishing industry, in which I was involved, called for a specific mechanism for the resolution of disputes and the setting of fish prices. An independent entity would set fish prices when there was no agreement between parties. The proposal also called for an arrangement to provide appropriate commercial information such as market conditions and returns, costs and revenues of harvesting and processing activities. The intent of these was to allow informed bargaining to take place but for settlements to be made in a binding and timely manner. It was clear to me at the time that Premier Smallwood liked the proposal for such a binding arbitration mechanism to settle fish prices. I did not have the

wherewithal or resources to draft the appropriate legislation. Instead, the proposal was passed on to the bureaucracy and resulted in the Fishing Industry Advisory Board (FIAB) being established as a separate stand-alone entity that had no legislated function in the collective bargaining system. This lack of a clear and definitive legislation provision for informed bargaining and timely and binding dispute settlement is still a significant shortcoming.

The FICBA of 1971 allowed the Newfoundland Fishermen, Food and Allied Workers Union (NFFAWU) to seek certification on a regional basis; and by the late 1970s, it was certified to represent all harvesters except those north of Makkovik and on Fogo Island. The Union negotiated the first collective agreement covering fish prices in Bonavista North in 1972. The contract language in Appendix A of that initial Agreement, as proposed by the processor and accepted by the Union, referred to agreed fish prices as being the minimum prices. These minimum prices, with very rare exceptions, remained the *de facto* prices paid by all buyers for most species until the late 1980s. Deviations from this practice then began to arise when some larger inshore vessels began prosecuting a new cod fishery on more middle distant grounds in 3L. The negotiated price then became more clearly a minimum one. While a major strike occurred in 1981, there were otherwise only some minor local disputes over the almost two and a half decades of traditional collective bargaining for fish prices and related matters.

While the legislation made provision for buyers or processors to organise an association to collectively bargain with harvesters, it made no clear provision for accreditation of such a group at that time. In 1977, the main fish processors association, FANL, acknowledged the FFAW as the bargaining agent for harvesters and engaged in yearly collective bargaining for all species except lobster.

FANL attempted (with the support of FFAW) to get accreditation by an amendment to the legislation in 1991. However, the proposed bill died on the Order Paper because of successful lobbying by non-FANL members to kill the legislation. Amendments to

the legislation in 1998 did provide for accreditation of a processing organization for collective bargaining, but only for accreditation covering all species. FANL applied for accreditation on the basis of a single species in 2001 and all species in 2002. In 2001, the Labour Relations Board ruled the legislation did not allow for single species accreditation. FANL eventually withdrew the 2002 application and chose instead to opt out of the FOS model and structured collective bargaining and later to disband. Accreditation of a processor group has not succeeded to date.

The FOS Period

This traditional collective bargaining arrangement functioned more or less satisfactorily in the years before the groundfish moratoria when the industry was predominantly a groundfish-based activity. By the mid-1990s, when crab and shrimp had clearly replaced groundfish as the basis of the industry, the opening of one or both of these fisheries was delayed in three of the five years from 1993 to 1997. The major delay in the opening of the crab fishery in that latter year led to the appointment of the *Task Force on Fish/Crab Price Settlement Mechanisms in the Fishing Industry Collective Bargaining Act* in September of 1997.

This Task Force reported in January 1998 and recommended the trial of an interest-based method of collective bargaining termed "Final Offer Selection". Under this approach, harvesters and processors are compelled to bargain under strict time-lines and to use final offer selection arbitration to decide any unresolved points (usually price) so that a timely start to the major fisheries was ensured.

A Memorandum of Understanding (MOU) was an important feature of the model. It was the Terms of Reference for collective bargaining and had to be agreed to by the parties by December 31. The MOU provided an overview of the collective bargaining model, the role of the arbitrators in the process, guidelines for arbitration, arbitration procedures and outlined the dispute resolution process to be used during the conduct of fisheries. Harvesters and processors then had to use the MOU as the basis for

bargaining for the upcoming season. In the absence of the parties agreeing on any of the components of the MOU, an independent third party, whom harvesters and processors had identified, would arbitrate the issues. Other parameters, such as the schedule of negotiations and choice of a facilitator, had to be completed by February 1.

One key feature of FOS was the interest-based bargaining aspect. Harvesters and processors met prior to actual price negotiations to discuss issues related to the fishery. These included timing of fisheries, grading methods and protocols and trip limits etc. At the start of collective bargaining, an independent person provided an overview of markets including prices and other factors affecting those markets. This was a critical feature in settling prices. Previously, harvesters and processors could not agree on an assessment of the actual market situation. In a declining price market, harvesters did not believe the claimed magnitudes of price declines, and in increasing price markets, harvesters did not trust the price increases reported by processors. The substantial levels of mistrust on this point alone contributed to the major crab disputes of 1996 and 1997.

Another key feature of interest-based bargaining was the appointment of a facilitator who ensured all the necessary work was done for the negotiations to proceed, e.g., the MOU, scheduling of negotiations, etc. He chaired the interest-based phase of negotiations and the actual price negotiations. The facilitator also kept the arbitrators informed about negotiations and provided regular verbal and written updates. He was the liaison with government ensuring that market reports were prepared and ready for each set of negotiations.

This approach was evaluated after two years (in 1999) and the legislation amended in early 2000 to permit its continuation on two-year cycles unless one or the other party used the opting out provision. The FOS approach continued towards the end of 2002 when FANL invoked the optioning-out clause citing dissatisfaction with the continuing inability to enforce terms of collective agreements and the inability of FOS to produce

a fair and final price. The government extended the arrangement for one more year; the FOS model then terminated at the end of 2003. By that time, FANL members had disbanded that association. The new organisation that emerged was not given a mandate by its members to bargain collectively as an association.

Under the FOS arrangement of 1998 to 2003, the parties negotiated 56 collective agreements. They achieved 31 of these through negotiation while the FOS arbitration procedure was used to settle price in the other 25. In 11 of these cases, the arbitrator selected the final offer of FANL and that of FFAW in the other 14 cases. The most significant outcome was the more timely start of this major fishery from 1998 to 2002.

The Current Arrangements

In 2004 collective bargaining reverted to individual targeted negotiations, which in the case of crab, all major processors joined at an early stage. The main 2004 crab fishery started on May 6; while the 2005 season, because of the protests against RMS, did not commence until May 22. (Processors and harvesters on the West Coast started operations earlier in both years, as appears to be the general practice in that area.) In the six years when FOS was used, the main crab fishery started at various dates in April, ranging from as early as the fourth to as late as the 21st. Start times in the two years prior to FOS were mid-June in 1996 and July 21 in 1997. An early April start-up in the crab fishery enables larger vessels to begin fishing before the smaller vessels are capable of operating. This creates a more natural flow to the fishery so that operations extend over a longer period; most large vessels also then are ready to begin fishing shrimp in May, allowing that season to be extended at the front end.

The 1998 Task Force proposed the FOS interest-based model be tried on a two-year pilot project with provision for a review after the end of the first year. It also recommended the establishment of an auction on a pilot project basis. It was not clear as to what it thought should happen after that point, whether FOS should be continued or whether fish auctions would be the preferred course of action. The

opting-out provision of FOS implied it would only work as long as the parties wanted it to work. Furthermore, in the then buoyant crab market conditions, harvesters and processors were dividing increasing wealth. However, as markets declined, the sharing of decreasing returns would become more difficult. This was already evident in the shrimp fishery. The first real test of the model would take place in that fishery and it failed there in 2001. On the other hand, because crab prices generally remained at historically high levels from 1998 to 2004, there were no major disputes until during the 2003 season. There has proven to be no real desire to adopt fish auctions; nor are there concrete indications that this would be a really viable way to set prices in the inshore sector. As mentioned in the previous section, the threat by the Minister to introduce an auction to the inshore shrimp fishery in 2004 hastened adoption of the "Gregory/Broderick" operational plan.

The status of collective bargaining in the fishery now is that the industry has reverted to the traditional model of strike or lockout to settle differences. In the major fishery (crab), with potentially shorter seasons becoming the norm, a system that does not force timely settlements to enable early starts to the season is a recipe for disaster for the rural economy. The loss of interest-based bargaining is actually a bigger problem. It makes it much more difficult to incorporate such matters as quality grading and measures for orderly conduct of the fisheries into collective agreements. Resolving this issue in a manner that provides the greatest public good should be a high priority for the government. I will return to some specific matters on collective bargaining in Sections 5 and 6 below.

5. ISSUES FOR 2006 AND BEYOND

In this Section, I will outline the most significant factors underlying the current crab sector crisis that have brought it, and the industry generally, to the dismal situation in which it is now finds itself. These have all contributed to processors' demands for the use of RMS. These include past actions or positions taken by government and industry members that have caused many of the chronic problems of this industry to persist and create the current state of the industry. In doing this, I will almost be assigning blame when it is deserved, which will be largely across the board. The causative factors include the development and maintenance of excess capacity in the harvesting and processing sectors, hidden corporate control of harvesting, the inadequacies that have developed in the collective bargaining and price setting arrangements, the problem of excess pools of processing labour and the "talqual culture" of the industry. These factors have all combined to produce a situation that made adoption of RMS a panacea for certain industry players and almost a complete anathema for most harvesters.

When I accepted the invitation of Premier Williams to inject myself into the fishery after some considerable absence, I was not surprised, but unfortunately disappointed, to find that the more things had changed the more they remained the same. This is at least the fifth major fisheries crisis that I have been involved with in the past almost forty years. Many of the issues are still the same, except in some ways, they have gotten worse. Therefore, I am fearful for the future of this industry if we allow the significant underlying problems of the past to remain unsolved. This situation is exacerbated by the considerable and debilitating distrust that still exists between the parties and the uncoordinated management decisions and actions of both levels of government.

Management of Processing Capacity

When the Fishing Industry Renewal Board submitted a report in 1996 on management of the fish processing sector, one of the issues was the demand for new crab licences. The report cautioned against a wholesale increase in crab processing capacity. Instead, it recommended consideration for new licences be given only to three major fishing centers (Twillingate, La Scie and St. Anthony) that then did not have crab licences. There is no doubt in my mind that the Wells government, which commissioned that report, intended to implement it generally as it was presented.

Unfortunately, Premier Wells stepped down. It is ironic that his successor, Premier Tobin, proceeded in 1996 and 1997 to do the exact opposite of what he had done as Minister of Fisheries and Oceans in 1993 and 1994. Then he had been the recipient of the Atlantic Task Force on Incomes and Adjustments in the Fishery. He also was mainly responsible for getting billions of adjustment dollars spent to deal with aftermath of the cod fishery closures in Atlantic Canada, mostly in Newfoundland and Labrador. The primary problem in the industry then had been the considerable redundant capacity created by these closures. Problems in the ranks of harvesters and plant employees were addressed in part. The newly redundant capacity in the processing sector was not. In 1996-97, that provincial government, with the full knowledge of the mess we had been in only four or five years earlier issued 17 new crab licences. Three more licences were issued from 1998-2000 and another six would be added in 2001.

This undisciplined response to the increases in the crab and shrimp resource and harvesting licences of the mid to late 1990s contributed to the build-up in crab (and shrimp) processing capacity and in a significant way to the crisis we have today. The additional processing licences were issued for both species with complete disregard for such basic factors as total resource requirements versus availability, economics of location and the general viability of processing operations. This was a singularly unprecedented ignoring of the processing over-capacity problems that still lingered in

the industry from the groundfish collapses of the early 1990s. Indeed, some of the crab licences issued never operated; resource availability was already inadequate even before the declines of this decade began. The main results of that abdication of responsible public policy included the maintenance of some operations that would, and should, have left the industry, the establishment of other facilities in uneconomic locations and even the entry into the crab processing sector of new operators. The overcapacity created by these licensing actions drove the various industry-led attempts to find rationalisation measures and plans for the crab and shrimp sectors over the last six years or so; these usually featured RMS as the preferred solution of processors.

Management of Harvesting Capacity

While the provincial government significantly increased processing capacity in the last ten years, no real progress has been made in reducing unnecessary capacity in the inshore harvesting sector over the same period. The fleet restructuring issue in the inshore sector has become a complex one involving various and related parts of DFO's licensing policy. These primarily include the rules relating to vessel replacement, fleet separation, owner/operator and leasing or temporary registration of vessels. Vessel replacement rules govern the size of new vessels by limits on cubic capacity and length barriers at 35, 45, 55 and 65 feet LOA. DFO policy currently allows individual fleets to submit proposals for increasing vessel sizes beyond these limits provided a rationalisation plan is part of the proposal. To date no such fleet proposal has been submitted except for the Union's proposal for a fleet funded and controlled buyout of under 35 ft. snow crab licences. This in fact was a condition of these licences being converted from "temporary seasonal permits".

The fleet separation policy was intended to freeze processor ownership of inshore fishing licences at the level it had reached in various fisheries as of 1979. Essentially, no additional licences could be issued to, or acquired by, processors after that point. Related, and complementary, to that policy was the requirement for the owner of a

fishing licence to operate the vessel authorised by that licence. Finally, the provisions for leasing of vessels are designed to give harvesters the flexibility to acquire emergency or short-term replacement units. While a replacement lease for a lost or destroyed vessel can be approved for up to two years, there is also provision for two harvesters to pass the registration of the same vessel (lease) between their enterprises every 11 months. The current policy for "combining" of licences or enterprises only permits temporary "buddying-up" of two such units, mostly in the under 35 ft. crab fleets. There is no permanent combining that results in one licence being cancelled and a larger vessel being used by the newly combined enterprise.

In any event, the present vessel replacement and associated rules are ones that were designed and instituted in a nearshore groundfishery. These are not suitable to deal with the current situation where inshore vessels are really conducting offshore fisheries in both crab and shrimp. Despite safety concerns and well documented shortfalls in vessel design and operating efficiencies, the inshore fleet remains hampered by these outdated replacement rules for a variety of other reasons.

While some harvesters favour combining of enterprises to create larger and more efficient operations, the majority of FFAW members continue to oppose this approach because of a fear of increasing corporate control of fishing enterprises. To avoid this eventuality, the FFAW's proposed rationalisation plan for the under 35 ft crab fleet calls for internal fleet financing of IQ buy-outs for re-distribution on some pro-rata basis to remaining operators. This, at best, will be a very long-term process whereas improvements in economic efficiency of these fleets are needed now. While there are some grounds for the concern of increasing company control of inshore licences, it should not result in the complete rejection of controlled combining and transferring of individual licences or quota shares. The very increasing of the size of an enterprise does not automatically mean a processor will become the owner of it. Conversely, improving the efficiency of an enterprise should make it more capable of remaining independent.

At this point, I cannot help but observe how so much of this industry is engulfed in subterfuge. The bonus payment system itself falls into that category. An even more striking example is the position of many harvesters and the Union in opposing consolidation in the harvesting sector. The argument they make, which has validity, is that as long as the Federal Government does not enforce its policy of fleet separation, their accepting or approving fleet consolidation would only give processors a continued chance to increase control of the harvesting sector by the use of trust agreements or beneficial use contracts.

Of course, I have been around long enough to know something of the darker side of ourselves. The opposition to fleet consolidation is based on more than just the fear of corporate concentration. There is also a negative reaction towards those who might better themselves by getting bigger boats and more quotas. We don't always enjoy seeing others getting ahead. This is probably a contributing factor as to why so many harvesters oppose combining.

Yet, while this is the official position of the Union, some harvesters use a back door around the current "no combining" policy. Two licence holders fish their quotas with one vessel registered to one of them for this season. The next season the vessel is registered (leased) by the other and again is used to fish both sets of quotas. This can go on indefinitely. Thus, the underlying cause is not tackled head on but is handled through the back door. This is simply another example of blindfolding the devil in the dark and of DFO, and perhaps all in the industry, taking the course of least resistance.

In addition to FFAW members' unease with transferring and combining of fishing licences, some of the rationale and support for RMS by processors, also has been caused by the increasing corporate control of fishing enterprises through the use of "trust agreements" or "beneficial use" contracts. Some processors are reported to be have used this approach rather successfully, and thereby increased their share of raw material at the expense of other processors who cannot, or will not, do the same. This

"stealth approach" to acquiring control of raw material fuels the views of some processors that an uneven playing field exists in the procurement of raw material in addition to harvesters' concern of creeping corporate control of transferable licences or IQs. The response in the first case is to favour the introduction of individual raw material shares for processors; and in the second instance to support non-transferability of fishing licences and IQs.

In a very real sense, DFO has contributed significantly to the present problems of the industry by the way in which it abandoned or ignored the policy of fleet separation. At the same time, it has a related policy to permit more flexibility on size and capacity of replacement vessels contingent on self-rationalisation proposals by individual fleets. They must know, or ought to know, that the Union will be opposed to such a policy as long as fleet separation policy remains in limbo and is not really enforced.

This lack of action and clarification has contributed to the present problems in dealing with over-capacity and operating inefficiencies in crab and shrimp, and indeed the whole inshore harvesting sector. This situation can only be remedied by DFO's enforcing its fleet separation and owner/operator provisions of licensing policy in accordance with its original rationale and intentions. The provincial government and the industry should seek a clarification of that department's intentions on this point. Related, and even basic, to all this issue is the fact that the level of overcapitalisation in the 35-65 ft. harvesting sector is creating a demand for excessively high levels of prices compared to what the market can deliver on a continuous basis.

These persisting levels of over-capacity in harvesting and processing and the resulting inefficiency continues to condemn the industry to being a multiplicity of under-financed operations producing commodity items for an increasingly competitive global seafood market. With a declining crab resource on the one hand and a world over-supply of shrimp on the other, a way must be found to reduce this capacity in an effective but controlled manner that most can live with. The solution must fall

somewhere between the completely unfettered use of so-called free market forces and the complete opposition to rationalisation on the other.

As I examined the various underlying causes of the present industry problems, it became apparent to me how many of these were the result of years of uncoordinated management decisions and actions by both levels of government. These were taken in isolation in each sphere of authority and resulted in excess capacity in both sectors with no immediate action underway to remedy them. It is obvious to me that this is a classic case calling for some form of coordinated management arrangement to address a jointly caused problem in a set of circumstance unique to this province. It is tempting to speculate, had such an integrated arrangement been in place over the last decade whether the industry and province would be facing the current problems caused by overcapacity in the harvesting and processing sectors.

The Collective Bargaining Scene

The demise of FOS in 2003 put the setting of fish prices back to where it was before 1998. The current legislation enables only targeted or individual company bargaining; and strikes or lock-outs are the only means of settling disputes that are not resolved in negotiations. The industry arrived at this situation because FANL opted out of FOS. It was then disbanded and replaced with an organisation that was not given a mandate to bargain collectively. The main reasons given for processors taking these steps were the inability of a non-accredited industry association to enforce provisions of collective agreements, negotiated prices being only minimum prices, an increasing share of industry revenues being appropriated by harvesters and a desire to obtain an RMS system.

There is a great deal of frustration among fish processors caused by the inability to deal with the major problems they perceive, i.e. predatory pricing and related practices. These problems are exacerbated by the abysmal failure of the Federal Government to enforce its fleet separation policy and to advance the introduction of

fleet rationalisation plans. It was ably assisted by the folly of the Tobin administration in the astonishing increase it created in processing capacity in the late 1990s.

In good times processors lived with this situation. Indeed, at least five of the major Newfoundland processors did so well in the crab fishery in the late 1990s and early 2000's that they were able to considerably expand their operations into the Maritime Provinces.

They believe, as I do, that the success of FOS was helped by their informal sharing programs, which ultimately were sacrificed on the altar of Newfoundland egalitarianism. An investigation of the so-called cartel, in which they were ultimately exonerated, led to the end of these arrangements in 2003.

Some outside observers believe processors' absolute frustration with the collective bargaining process is due in part to having been outmanoeuvred by the Union. However, they also perceive the Union to be unable or unwilling to deal with the problems of bonus payments and consequential predatory pricing and related practices. The obvious solution to this lay in achieving accreditation and doing openly what they had been doing covertly, i.e., have some sort of sharing system. They assert that, if they are forced to negotiate prices through collective bargaining, they have a right to some sort of coordinated guarantee of supply. As best as I can see, the Union's response to accreditation did not help them, but then again, they did not help themselves either. They failed to properly use collective bargaining to address these problems in part because of the previous government's failure to move on their accreditation application. This led them to seek government's intervention to do by legislation what they could not do at the bargaining table.

A more orderly system of bargaining that could deal with these issues is the answer for both parties. Processors continually blaming the Union for something they as a group, or at least some of them, helped create is not sufficient reason for the government to incur the wrath of harvesters by being perceived as the "agent of the

fish companies". The popular Newfoundland practice of engaging in duplicity can be laid at the doors of both parties. The RMS had two basic objectives, industry rationalization and the orderly sharing and distribution of raw material. The real reason was to find a way to stop predatory pricing and associated raiding practices; practices facilitated by the Federal Government's failure to enforce its fleet separation policy.

I indicated earlier that accreditation of a processor organisation was not possible under the legislation until 1998. The second attempt at accreditation by FANL following the 1998 amendment was opposed by the FFAW. While that application was withdrawn, this opposition by the FFAW was an unprecedented withdrawal from the field of collective bargaining. An accredited processor organisation would provide a variety of benefits to the commercial operations of both harvesters and processors. One of the more significant would be the potential to negotiate and enforce fish prices based on real differences in quality. Then those who produce superior products would be paid accordingly; and such initiatives could not be short-circuited by rogue harvesters or processors. This could also eliminate the issue of negotiated prices being only minimum ones. That situation really amounts to money being left on the table, or collective bargaining only operating on the basis of some "talqual" approach to setting prices at the lowest common denominator level. The overall industry should be able to negotiate and enforce prices based on quality if we are ever to be more than a commodity producer forever at the mercy of a more efficient global seafood industry.

Having said all that, the present legislation provides for fish prices to be set through collective bargaining. It will, and has continued to, take place even with the ending of FOS. It is complete naivety for fish processors to think they can completely withdraw from collective bargaining; it will happen either individually or with groups as in the case of crab in the past two years. This course of action so far has only served to create more instability in the important fisheries and has gained processors nothing because of their overall approach to gaining RMS in crab.

The claim that "the wealth" in the industry has shifted in favour of harvesters only appears true to the extent that landed value is now a higher percentage of final product value. The overall industry now mass-produces more semi-finished products with the processing activity accounting for less added-value than in times past. However, this only indicates the changes in the shares of gross returns; a proper evaluation of a real shift in wealth would require detailed information on actual costs and revenues, which neither processors nor harvesters are disposed to reveal. Without such data, it cannot be shown if either party is getting less of the total net returns from the industry than previously, or in comparison to what is needed.

In addition, the price-to-market formula used in the crab fishery collective agreements since 1998 gives harvesters almost all of the increase (now 90%) in market return above an agreed base. This means that in a rising market more of the changes in marginal revenue would appear to be appropriated by harvesters. In a declining market, the reverse would be true. I have the distinct impression that many processors and fishermen do not understand this aspect of their collective agreements.

There was a time when the main role of the Union was to negotiate a price, which then was generally the price paid for all landings. Other activities involved ensuring that fishermen and plant workers got their fair share whenever government bailed out the industry as they did in the 1970s and 1980s. That had not been the case in the first bailout I witnessed in the late 1960s when the price received by fishermen was a totally separate and unrelated matter as far as those in power were concerned.

The companies now perceive the Union as being unable to address some of the major issues confronting the industry. A prime example is how their attempts to develop raw material sharing were viewed with such hostility by many fishermen, particularly those who were the primary beneficiaries of the bonus payment system. This is all an example of the talqual mentality of guaranteeing a minimum price to all fishermen and

then allowing competitive forces to generate, for certain fishermen, an extra payment. As this is a direct result of negotiating a minimum price, the industry is doing by the back door what it can't do by the front. It is clear that the value of all crab is not the same because of such factors as appearance, "meat fill", available volume, proximity to the plant, etc. These quality factors in crab have proven too difficult for the parties to negotiate. If this, and similar matters are not addressed, we are in danger of continuing to have the same instability in the future as we have had in the past.

I understand why individual harvesters would be concerned that an RMS system and the orderly supply of raw material could negatively affect their economic interests. However, the institution of RMS, in and of itself, does not remove power from harvesters as a whole; they have a union that does bargain for them. Indeed, collective bargaining could easily be used to deal with a variety of commercial arrangements that are critical to both harvesters and processors.

Surely, the ingredients are now there to develop a model that will virtually guarantee a fair price for all. It is largely a matter of having the will to adopt the appropriate formula. The change negotiated in the "price-to-market" formula in 2004, which by making the minimum price higher, reduced the ability to pay bonuses, is a small step in the right direction. In the future bargaining process, parties should move towards maximizing the initial price for crab thus reducing the potential for bonus payments. However, there are legitimate factors, such as volume and quality that could, if not easily, be part of a bargaining process that would allow for price differentials.

The options for restoring a level of stability in this area include re-instating the FOS model, adopting a more traditional form of compulsory and binding arbitration and establishing a standing panel (with a research staff) that could decide prices and other unresolved issues. These three options would have an imperative of reaching binding decisions by some pre-set date prior to the opening of major fisheries, unless the parties mutually agreed on matters before then. Government should give careful but timely consideration to adopting appropriate measures to resolve the present impasse

over the way in which collective bargaining should proceed in this industry. In so doing, it should take steps to counteract the high level of misunderstanding I believe exists in many quarters over the actual effects of some of the needed updating of this legislation. This is especially true of the question of accreditation of a processor association; it is widely misunderstood, misconstrued and frequently subjectively opposed by both processors and harvesters.

The Processing Labour Force Issue

The other major problem in the industry remains the existence of excess local or regional pools of processing labour. Almost all of these are really carry-overs from the days of a groundfish-based processing sector. In this case, we are still living with some of the aftermath of the cod collapse. We have workers in the fish plants who just missed qualifying for one or other of the exit programs of NCARP and TAGS. I do not need to go into great detail on this issue, which has been dealt with in other reports and is not unfamiliar to those knowledgeable of the industry. However, I find the following points to be especially significant:

- A 1998 Report by HRDC reviewed TAGS and other labour market programs and concluded: "Clients and their industries and communities face enormous adjustment problems which will take decades to address."
- Other findings from that report included:
    - 72% of TAGS clients had less than high school education
    - 67% were over 40 years of age
    - Have limited transferable skills
    - Live in small, rural and often remote communities in areas of high and entrenched structural unemployment
    - Have strong social, economic and cultural ties to communities
    - Workers over 50 are less likely to take part in training or other adjustment activities.

I find the following points are relevant to this issue.

- A July 2002 report prepared for the Forum of Labour Market Ministers (FLMM) noted that 55-64 year olds generally experience greater labour market difficulties since they are often concentrated in traditional industries. The reality is that employers don't want older workers. In addition, at least 60% of new jobs require post-secondary education.
- The fishing industry is in a transition period. While nationally we are experiencing a skills shortage, the fishery sector problem is one of too many older workers, the short duration of processing jobs and the resulting low incomes. We can't attract young people to seasonal work. This has huge implications for the future of rural Newfoundland and Labrador where the fishery remains the main economic engine.
- Reducing excess labour makes economic sense in terms of a longer work year for those who are left, less money being drawn from the E.I. Account, more stable incomes, increased living standards etc. The younger workers who would remain are more capable of meeting the changing demands of fish processing jobs.
- The different products now demanded by seafood markets have created significant technological change in most processing plants. This advanced technology has resulted in higher productivity, increased profits but less total work. It also means seafood processing employees are now working harder and faster with more serious wear-and-tear on their bodies.
- When processing plants reduce workforces, the older workers stay and the younger workers leave. Family and household commitments constrain mobility.
- In essence, workers who could not leave the more labour-intensive industry before the groundfish collapses are now part of a surplus labour pool in a more capital intensive sector that cannot provide a sufficient number of well paying jobs.

- The declining crab resource means that this sector will need less total labour than in the recent past unless there is a major (and unlikely) shift in market demand away from the present commodity product (sections). Only when some new product is demanded that can be fully processed only close to the location of landings will further processing lend any solution to this dilemma. A smaller number of better paying jobs could result only from a sector producing the current level and type of output over a longer period in fewer plants. In the meantime, the processing season is highly seasonal with most activity taking place in a four month period.
- In some cases, usually offshore plants, workers are job-sharing across two or more shifts simply to qualify for Employment Insurance (EI).
- Most plant labour forces consist of disproportionately older workers with long-term attachment to that operation. In most cases, one shift would be able to work for a more meaningful period if surplus workers could be removed with dignity.
- In almost all cases, these surplus workers would not be replaced if they were to be assisted out of the industry. The one unfortunate exemption may be the case of some crab plants that use casual workers to handle periodic gluts caused by the rush to harvest and process.
- However, it is irresponsible to suggest or imply that the current numbers of processing workers attached to most plants can be accommodated in the stable industry that was to emerge under RMS or any other form of streamlining. It is not happening in the offshore sector where a different form of RMS has been in place since the early 1980s.

In many ways, the situation faced by the province's fish processing sector is not unlike that faced by the Canadian textile industry. Changing market requirements, a strengthening Canadian dollar and extreme competition from lower cost economies (especially China) have all produced a structurally changed fish processing industry with considerable excess labour. This similarity could be used to gain federal

participation in a labour force restructuring program caused by circumstances beyond the Province's control.

Summary

In summary, the present state of the crab sector (and the inshore fishery generally) is one where even improvements to the current price setting arrangement to provide timely starts to the crab fishery alone would not remove all of the underlying instability that has existed since the late 1990s. Other conditions also must be changed if this sector is going to continue to carry much of the rest of the industry. The crab (and shrimp) processing sectors must be streamlined to correct the results of irresponsible licensing actions of the late 1990s. The current ability of more aggressive processors to increase direct control of harvesting capacity must be curtailed or eliminated to create a more even playing field in the acquisition of raw material and to remove an impediment to improving the efficiency of the harvesting sector. Then responsible leadership can encourage harvesters to design and adopt measures to improve the operating efficiency and financial circumstances of their individual enterprises and fleets. The existence of excess processing labour remains another carry-over problem from the groundfish collapses that RMS will not solve in a sector now impacted more by a declining crab resource than its excess capacity. Finally, the need for more coordinated federal/provincial decision-making just jumps off these pages. I will suggest some possible courses of action to deal with these matters in the next section.

6. CONCLUSIONS AND RECOMMENDATIONS

Based on extensive discussions with numerous industry members and groups over the past six months, extensive assembled information, data and advice from my RMS Committee members, I have come to seven groups of major conclusions and associated recommendations. While I was asked to examine issues related to RMS in the crab sector, all of these findings, by extension, are applicable to the whole inshore industry.

Some Background and Context

However, I first cannot help but comment on how the current situation in the crab fishery has heightened attention to the crisis in rural Newfoundland. Most of rural Newfoundland and Labrador has been in crisis of various degrees through most of our history. Indeed, it was the history of these crises in rural Newfoundland, or outport Newfoundland, as it was then known, that propelled us into Confederation. One thing we ought to have learned over the 50 years or more since then is that we have not, we cannot and we will not solve all of the problems in all of what is now considered rural Newfoundland. This was known to the Government 50 years ago. It had a strategy to develop outport Newfoundland around some of the historically significant fishing towns, and in some cases, the creation of newer major locations known as growth centres. Some of these, such as Burin, Grand Bank, Bonavista, and Twillingate, had been such centres throughout most of our history. Others, such as Marystown, were the direct result of government policy. There was a recognition that the dynamic of outport Newfoundland could be revitalized around such major centres where people could be provided employment opportunities and modern amenities.

The Fishing Industry Renewal Board followed that notion of key strategic centres when it recommended that additional crab processing licences be considered only for three of our most significant fishing communities (Twillingate, La Scie and St. Anthony). I believe the Wells administration, had it remained in office, would have

developed the crab fishery in a more sane and orderly way. It is a tragic example of the absence of reflection and depth in the recent politics of this place, that Mr. Wells' successor, Brian Tobin, should have then proceeded, through his Fisheries Minister, to double capacity in the crab fishery, thus perpetuating a vision of rural Newfoundland that condemns us to an ever increasingly precarious existence. It is ironic that he did so soon after having been the recipient of the *Atlantic Task Force Report on Incomes and Adjustment in the Fishery* that referred to the state of the industry as "a catastrophe of biblical proportions." What that administration did was another classic example of the pandering that has become a touchtone of political life. Instead of trying to develop a fishery rationally, we try to be all things to all people. The net result of this abuse of the egalitarian notion is to condemn us to have less meaningful jobs and more outward migration.

One of the most significant issues facing outport (rural) Newfoundland today is the same as it was more than 50 years ago. That issue is how we maintain a dynamic outport society. It was known then, as it is known now, that not all outport communities will survive. What is needed now, as was needed then, is a number of places that provide meaningful employment and the range of modern amenities. This challenge from the past remains the challenge of the present. It is both ironic and unfortunate that the inheritors of the legacy of the past squandered this in the late 1990s. Of course, it is a challenge for politicians who are continually pressured to be all things for all people. Leadership is about rising above that and providing a focus for development. The absence of such leadership will do nothing to stop the outflow of people from the many communities that now are being temporarily preserved. This truth is a difficult one, perhaps more so today than it was 50 years ago, but the result will be the same.

There is a great deal of cynicism generally regarding both levels of government's intentions for the fishing industry. Reduction of capacity in the harvesting sector has really not occurred through recent policy. The collapse of groundfish stocks led to fishery and plant closures and resulted in federal government intervention to assist

harvesters, plant workers and attempts to reduce harvesting capacity. However, when there was a glimmer of hope, the provincial government issued additional processing licences.

I am concerned that the manner in which Ottawa approaches public policy may have an implicit negative impact on our province's ability to deal with some of the serious issues and problems in the fishery. One systemic problem is the inappropriate way in which the Federal Government divides the nation into regions. Prior to Confederation, the three maritime provinces comprised a region. The addition of Newfoundland to this grouping created an artificial Atlantic region. In many ways we have more in common with more northern and isolated areas of eastern Canada, yet we are doomed to have either Moncton or Halifax considered the centre of our region. This greatly impedes local DFO officials, our Provincial government and our industry in designing a strategy to address the real problems of our fishery. We must have an application of the fleet separation policy that reflects our needs and a vessel replacement regime that is more open and allows fishermen, over time, to acquire larger vessels up to and including 100 ft, but to do so under the umbrella of fleet separation and the other rules applying to their current vessel size class.

In my years of involvement with the fishery, people from all parts of this province, have, at different times, continuously espoused the conspiracy theory. My response, as often as not, is that we should never overlook the possibility of incompetence. My conclusion, in the present situation, that DFO, in many cases, over the years has fostered the conspiracy theory. Certainly, the failure to deal with the fleet separation issue is a good example. There are those who feel the real objective is to undermine this policy.

Much of today's fishery crisis is exacerbated by the lingering effects of the last great crisis: the groundfish moratoria. This should be addressed by both levels of government working in tandem. The Federal Government can accomplish a great deal of improvement in the over-capacity of the harvesting sector for far less cost than

their programs under the previous moratoria. Moreover, they can do it with more significant and beneficial long-term impacts than were achieved previously.

The Federal Government has to understand the nature of the problem and deal with it. They simply have to make practical and straightforward decisions by becoming unencumbered by extraneous and irrelevant diversions over possible effects elsewhere in the Atlantic area. The Federal Government, in a way, is guilty, as are many in this society, of not being straightforward. Ottawa too often uses the conjured implications of Newfoundland policy proposals on the Maritimes and Quebec as an excuse to do nothing. We have a different problem and a different situation that requires a separate solution. I believe I am laying out a reasonable path for both governments to take; they just have to find the political will to do the job that needs to be done. They have to understand the problem, understand the solutions and act accordingly. We do not need another eight years of unproductive policy review in this crisis.

The combination of the resistance by harvesters to any reduction of harvesting capacity and DFO's mishandling of fleet separation policy means that nothing is being accomplished in this area. Thus, we are experiencing a genuine failure of leadership at all levels. Ten or so years ago, harvesters were right in seeking a greater distribution of emerging resources among all inshore vessel classes. Bonafide harvesters who had lost their livelihood through collapse of the cod fishery were given an opportunity to participate in the expanding crab and shrimp fisheries. That took vision, leadership and determination to depart from the standard national approach of DFO. This form of reverse sharing did not happen at all in the Maritimes. That it was done here is a reflection of the leadership of that time. Well, the situation has changed and a new vision is now required. This vision must include allowing existing harvesters to combine their enterprises thus reducing capacity but allowing a smaller number to actually survive. One approach is the current FFAW internal fleet self-rationalisation proposal for under 35 ft. crab licences. However, adoption of that should not in any way prevent individual harvesters in all fleets from combining up to

some reasonable limit on vessel size and/or total allocations. We should not allow our fear of someone getting farther ahead to stand in the way of doing what is right.

We must get beyond all that and move forward to design and adopt fleet replacement plans that allow combining of enterprises or allocations and provide greater flexibility on vessel sizes. The current size classes are no longer appropriate for the types of vessels needed to properly conduct today's fisheries by all fleets. The matter of resource allocation amongst fleets has really been settled for some years now and should be accepted by all as a given parameter. The principle that any future larger vessels retain the licensing and allocation privileges and related limiting conditions of their present size class appears to be one that needs some special assurance. This is especially applicable to the passage of vessels into the 65 ft. and over size class. It must be enshrined that these then create a special class of 65-100 ft vessels that retain the privileges and limitations assigned in their original size class. It does not mean that current 65-100 ft. vessels suddenly are part of the allocation pool attained by such former under 65 ft. vessels. Surely the linear thinking that fuels this concern can be overcome. As well, special consideration will have to be given to the access arrangements in the few fisheries still under global quotas; these generally apply to fairly small numbers of the vessels in question.

It is a time to develop a strategy for rural (outport) Newfoundland that recognizes a choice between perpetuating a culture of victim-hood, based on blaming outsiders for our problems and wallowing in our own self-indulgence, and that of a dynamic rural society that sees opportunities beyond the so-called and mythical "food fishery". Such panderers are really the prophets of false hope. If we allow these apostates to perpetuate their unrealistic and romantic vision of outport Newfoundland, then we are forever doomed. Indeed, we must get beyond all that if we are to maintain any semblance of dynamism in our outport fishing economy.

On a related point, I note also that many of our public figures spend a great deal of time talking about the conspiracy theory and the failure of Ottawa to deal with foreign

overfishing. I have always felt this was greatly overstated. For example, the present mess in which we find ourselves has nothing to do with foreigners.

The coast of Labrador and much of the north and east coast must now face what the south coast and parts of the east coast of Newfoundland faced in the aftermath of the groundfish collapse. Before that time, a dozen ports provided close to year-round employment to over five thousand Newfoundlanders and Labradorians. These jobs are gone forever. A viable crab fishery in the future must have fewer plants and fewer harvesters so that there is more meaningful employment for those who remain. That is where we are headed. The Federal and Provincial Governments have a choice: to have this crisis dealt with in an orderly manner or through an uncontrolled bloodletting. To avoid the latter, they must work together with policies that have the same objectives. The path is there for them, they just have to get on with the job.

In this regard, I am more convinced than ever that coordination of management actions for each sector is a definite part of the long-term solution to this overall problem. This approach would avoid the mistakes of the past but also provide the basis for effectively dealing with a serious capacity and efficiency problem that has been either jointly created or mutually left unresolved.

MY CONCLUSIONS AND RECOMMENDATIONS

Based on all that I have found and have been told regarding the current situation in the inshore fishery sector I find seven major conclusions to be inescapable. They focus on those critical matters most in need of immediate decision and action by both industry and government. My recommendations, in turn, flow from these major conclusions and are intended to address the problems identified in them.

RAW MATERIAL SHARING

Conclusions

The RMS concept is now seriously flawed and damaged as a possible instrument of fisheries policy. This is because of the following factors:

- The manner in which the processing sector pursued this concept and its failure to mount a convincing case for application of it to the fishery of this province.
- The outright refusal of FFAW members to even entertain discussions of it at the bargaining table.
- The attempt of government to institute it in the crab fishery before the RMS project in shrimp was concluded.
- The changed dynamics of crab fishery management now mean RMS will not slow the pace of harvesting and processing, thus having little or no effect on stability and operating efficiency.
- The new management measures for soft-shell crab means the IQs, which harvesters themselves, and not DFO, instituted are no longer a guarantee that a harvester will be able to catch his assigned share.
- Without increased stability and operating efficiency, the claims of diverting energies to increasing overall financial returns from the resource cannot be accepted as likely or even possible.
- It is highly unlikely that RMS would ever be allowed to function as an industry rationalisation or "exit compensation" mechanism because allowing transferability of RMS would immediately create perceived (and in reality) community quotas.
- The trial use of RMS in the shrimp fishery, that preceded the imposition of this concept in crab, was effectively abandoned by all parties in the second year of an agreed project.

Of all the claims made, I can see only two outcomes likely to come from RMS in crab. The first is some reduction in the so-called "head of wharf" competition to attract harvesters away from their present buyer. The second is that it would give some added value to company assets. However, I cannot conceive of these shares becoming freely transferable in any way, shape or form. They are more likely to entrench current operations because the RMS will be considered a community quota. Therefore, they will not contribute to industry rationalisation or increase the value of assets to the extent that transferable RMS might. As well, this second claimed outcome is a private benefit versus a public good and I do not feel government is obligated to grant it. No human measure can completely eliminate the causes of the first problem, but some other actions, short of RMS, could reduce them in the crab sector. Among them, I would include ensuring that the price-to-market formula moves toward maximum rather than minimum pricing, a system of production limits and reduction of both harvesting and processing capacity as possibilities.

Recommendation:

1. **I recommend that government terminate this project in crab and abandon the concept totally until, and unless, the overall industry mutually agrees to some variation of it in the future. This approach, as currently proposed, can only work to the extent its parameters, scope, terms and conditions, limitations etc. are first agreed in the collective bargaining arena.**

COLLECTIVE BARGAINING

CONCLUSIONS

The current provisions for setting fish prices by collective bargaining, especially in crab and shrimp, are completely inadequate to ensure timely starts to the most critical fisheries of this province. This, above all else, is the one situation that must be addressed **immediately** so that an improved price setting system is in place to ensure a timely start to the 2006 season.

By the mid 90s it was clear that collective bargaining, particularly in the crab fishery, was no longer working. A single price for crab meant a number of issues with significant economic consequences were not dealt with in collective bargaining. This resulted in fishermen and processors undertaking additional bargaining based on factors like volume, proximity to the plant or quality of the catch. The talqual mentality that I mentioned earlier has long been one of the main factors preventing such matters being dealt with through the bargaining process. This is clearly a negative side of egalitarianism that, even in the days of an accepted single price for all fish, made it very difficult to explore ways in which a premium price could be paid for quality characteristics of landings. In the crab sector, this inability to address these issues in the collective bargaining process produced the problem of bonus payments going to some but not all harvesters.

DFO's failure to maintain or implement its policy of fleet separation has allowed a number of processors to acquire assured supply through direct control over harvesting enterprises and licences. This gave them an additional unfair advantage over other processors in using the bonus payment system to attract additional fishermen and product to their plant. These factors led parts of the industry to surreptitiously develop a raw material sharing program to fetter such predatory practices and create a more level playing field. This is something that should have been possible to do legally at the bargaining table. Some people, independent of but knowledgeable about the industry, have suggested to me that the stability created by this sharing program was a contributing factor to the success of FOS.

While the attempt to institute crab RMS has proven to have been well intentioned but inopportune, the main factors in the fishery that led to it, continue. Some fish harvesters want to retain the possibility of receiving additional monies by bargaining outside the regular price setting system. I am fearful that none of this will change unless it is spoken about, and dealt with, openly. It is quite legitimate for processors to try to work out some sharing and distribution arrangement for available raw material. It is similarly legitimate for harvesters and processors to agree that, under

certain conditions, some catches or landings should receive extra money. Therefore, if these types of issues cannot be dealt with in regular collective bargaining, they may have to be handled in some expanded form of FOS that imposes a settlement where the parties cannot agree. This settlement must be arrived thorough a transparent process that is clear and available for all to see and understand. I am not as sure as I would like to be that all harvesters and processors ever fully understood the finer details of the FOS system.

There is a great deal of frustration among fish processors because of the inability to deal with what they consider their major problems. These include predatory pricing and related practices brought on by the abysmal failure to enforce the federal government's fleet separation policy and the reckless licensing of production capacity in the late 1990s. They believe that FOS worked partly because of the informal sharing system they were able to operate, until it was sacrificed on the altar of Newfoundland egalitarianism even though no basis for the allegations of a cartel was found.

Generally, fish processors believe the Union is unable or unwilling to deal with these problems of minimum prices, bonus payments and consequential predatory pricing. They assert that if they are forced to collectively bargain to set fish prices they have a right to some assured source of raw material supply. They feel they were denied the obvious solution to this issue by being unable to achieve accreditation because of government's failure to administer the provisions of the legislation and the Union's opposing it as well. However, they did not help themselves either in their failure to effectively use the collective bargaining process to address these problems. Their consequent blaming the Union for situations that they, in whole or in part, created is not sufficient reason to have the government incur the wrath of harvesters by being perceived as "the agents of the fish companies".

The central issue in the inshore crab (and shrimp) sector is how we get these fisheries back on an even keel and starting in an orderly and timely fashion. There are those

who feel that the current crisis has to get worse before this situation can be rectified. This would not be good for processors, harvesters, the industry and the Province as a whole. The Union seems to be indicating publicly they are willing to accept some form of mandatory price-setting system. I believe a number of processors wish to return to a voluntary FOS-like approach; although some of them want this only as a price setting mechanism with other arrangements involving the operation of the fishery being a separate matter between individual harvesters and processors.

Ideally, I believe the government's role should be to provide the framework that allows and encourages the parties themselves to come to their own collective agreement(s). If the industry as a whole proves unwilling to pursue this course, the institution of a permanent and binding price setting mechanism is then the only responsible option for government to adopt. In the current dysfunctional state of the industry, the need for the latter course action may be already upon us.

I have given some considerable thought and attention to the position of industry and the FFAW with regard to RMS. I found that by the end of my consultations the official position of most crab processors remained that without RMS there is no willingness to consider anything else. Conversely, the Union's position is still that anything resembling RMS is beyond their consideration or acceptance. It appears likely that if government does nothing, some processors, with an agenda for their own aggrandizement and increased position in the industry, will attempt to seek a settlement with the Union on fish prices. Others will take the opposite approach: refuse to negotiate in the hope they can do legally in 2006 what they found was illegal in 2003, i.e. to stop buying crab very early in the season.

This leaves the government with two basic choices: let the parties fight it out, or impose some orderly way to start, and proceed with, the fishery that would include compulsory arbitration in settlement of the price. This appears to be a position acceptable to the Union but not one acceptable to the majority of fish processors. However, government must act immediately to establish a more workable form of

price setting and collective bargaining that will ensure timely starts to the major fisheries. Despite the consideration being given by some to refusing to negotiate crab prices in 2006, and thus creating chaos and subsequent closures in the fishery, several industry members have expressed an interest in bargaining, under a voluntary use of FOS-like arrangements for facilitation and arbitration, to set prices for 2006. This will still be possible under the more permanent arrangement I am recommending as the more immediate and safer course of action for 2006 and beyond to ensure that at least the fishery starts on time.

Recommendations:

A New Price Setting Mechanism

2. **Therefore, I strongly recommend that government take the following actions immediately:**

   - **Establish a Special Standing Fish Price Setting Panel that:**
     - **Consists of three permanent members, including a chair, appointed by government.**
     - **Is given the necessary scheduling, facilitation and arbitration powers and capabilities to have prices and other matters settled through collective bargaining by specified dates. These scheduling, facilitation and arbitration activities should be assigned to a permanent staff member.**
     - **Has access to adequate market research, assessment and monitoring capability to provide the parties with appropriate market and related information. For example, in the case of crab, this would be the same, or a similar, service that seems to have been satisfactorily provided by John Sackton since 1998.**
     - **In addition, and most importantly, has the complete authority to set prices unilaterally if parties cannot agree by specified "drop dead" dates. If no collective bargaining is taking place or no agreements binding on all operators are being reached by these dates, the Panel should**

schedule a "Price Setting" hearing at which all parties could make appropriate presentations to it before it takes the final and binding decision on price. In the case of crab, this hearing date should be such that a price is set in time for the fishery to commence on April 1.

- Is empowered to deal with any unresolved matters pertaining to the conduct of the fishery that either party or the government may refer to it for a binding decision. These would include inter alia: trip limits, quality requirements, marketing strategies, the use of tied sales conditions, sharing arrangements etc. that influence the commercial conduct of harvesting and processing operations.
- Has the authority to institute monitoring and penalising of specified predatory practices.

3. Restore the legislative provision that collective agreements reached with processors accounting for at least 50 percent of the previous year's production of a species become binding on all processors licensed for that species.

4. As well, I recommend that government clearly specify that under this permanent Panel arrangement, while individual harvesters and processors retain the right to refrain from fishing or processing under any individual price, organised work stoppages would be illegal.

Improvements in the Collective Bargaining Provisions

5. I also recommend that government immediately commence the necessary legislative arrangements to make the following amendments to the FICBA that will correct certain current deficiencies and bring the provisions for collective bargaining in the fishing industry up to the general standard of labour relations in the province. I understand these items were the subject of considerable

consultations and discussions with industry leaders earlier this year. The recommended amendments are the following:

- To provide for the accreditation of processor organisations on the basis of a single species. Indeed, I recommend further that Labrador should always be excluded from accreditation of Island-based processor organisations. This will simply take account of the special provisions that now exist, and should continue, vis-à-vis processing activities in that area.
- To improve access to the Labour Relations Board so that all fishing industry parties have the same privileges as other employers and employees and the right to appeal to the Board to make a determination regarding the binding effect of a collective agreement.
- To allow either party to a collective agreement, to request appointment of an arbitrator to resolve an outstanding grievance and to enable the immediate filing of the arbitrator's decision with the Supreme Court of Newfoundland and Labrador, Trial Division, and to ensure it is enforceable 48 hours after doing so.
- To provide the Labour Relations Board with the authority to declare an unlawful work stoppage and to issue a cease and desist order, which is enforceable as an order of the Supreme Court within 48 hours.
- To increase fines and penalties for unlawful work stoppages.
- To allow an accredited processors' organization to recover negotiating costs from all processors who benefit from the negotiations and to whom the resulting collective agreement would apply.

6. Finally, I recommend that government make these changes to the collective bargaining framework for the fishery by acting quickly and authoritatively.

INDUSTRY STABILITY

Conclusions:

While I am convinced RMS as proposed cannot succeed, the only proposal made to me for measures to improve operating stability in the crab sector was for production caps based on the 2005 RMS. I have rejected this as being essentially the same as RMS. Last Spring the Union proposed a system that allowed a ten percent flex on the RMS numbers; this no longer appears to be their position. I have re-examined this concept and believe it is possible to develop a production limit system that would permit varying degrees of competitive flexibility while restraining some of the more aggressive practices. Such a system could provide some semblance of order to this sector to protect the continuing independence of the inshore fleet. If not, there will only be a greater opportunity for some processors to increase their control of harvesting enterprises, thus expanding a hidden form of vertical integration. However, I find this approach, at the moment, has little support on either side. I conclude that such arrangements can only be achieved through collective bargaining when the industry becomes better organised to handle such matters in that way.

In the course of my various discussions and consultations, I was told, on many occasions, about the unreported catches of crab that are landed and processed. I was also told the many companies felt their calculated share under the RMS sharing exercise was at least 20 percent lower than they believed it should be. This complaint is apparently different from that of not being given credit for purchases not processed but transferred to other plants. I have also been told that that recent enforcement measures have greatly reduced these occurrences. However, I am still concerned that there may still be some substance to these longstanding anecdotal reports of "midnight crab" that continue to circulate.

Therefore, I am fearful that this situation may be similar to what occurred in the 4R inshore dragger fishery in the early 1980s when tremendous levels of mis-reporting of cod catches were taking place. At that time, I was involved in making a proposal to

government that would have stopped this malpractice. This proposal, supported by fishermen and some major companies, was to require that all cod landed in that fishery go through a single weighing and receipting desk before being transported to processing plants. This never happened and the eventual outcome of that fishery is now well known. I am worried that a similar destruction of the crab resource may be taking place through lack of responsible reporting by crab industry members.

Another major problem that was brought to my attention is the increased difficulty of getting loans approved under the government's Fisheries Loan Guarantee Program. I have been told that this has developed to the point that the only way harvesters can get loans approved is for a processor to co-sign the application. This further undermines the ability of harvesters to maintain their independence. This has already been damaged by the increasing incidences of trust agreements, a failure to enforce federal fleet separation policy and closure of the Fisheries Loan Board. I believe government may help this matter by ensuring commercial lenders are aware of the importance it attaches to the even-handed administration of this loan guarantee program.

Recommendations:

7. I recommend that government encourage, assist and, if possible, enable industry participants to increase cooperation in the sharing, distributing and transferring of raw material supplies, especially in times of temporary over-supply. The minimum element of such an approach would be a "glut desk" arrangement for crab initially, followed by any other species on which industry participants mutually agree.

8. I recommend that at such time that the processing sector is organized to do so, the following proposal for production caps become a matter for collective bargaining. This production limit system ($P_{lim.}$) could be based on elements such as the following:

- ❖ Each licensed plant would be assigned an annual production limit, expressed in the equivalent of round weight landings.
- ❖ That limit would represent the maximum amount each licensed plant could purchase and process but would not limit its total buy. (Surplus purchases would have to be transferred.)
- ❖ This individual plant production limit would be the higher of the percentage assigned under the 2005 RMS, the percentage representing the three-year average of purchases processed in 2002 to 2004 or that represented by the "best year" of 2002 to 2004 and increased by a ten percent "flex" for plants whose above three year average was less than 2,000 tons and by a five percent "flex" for those exceeding that amount. This particular formulation produces a total flex of 13.4%; selecting other basis, such as the individual ones mentioned above, would produce total flexes ranging from +7% to +22%.
- ❖ The $P_{lim.}$ would not be a guaranteed level of supply, but a limit each plant could aim for until it is reached or catch quotas close.
- ❖ This arrangement should not prevent companies from moving raw material from plant to plant as would be possible in the absence of such a regime.

9. I recommend that government, in conjunction with DFO, investigate the validity of reported crab catches and production and ascertain whether the need exists to establish the type of mandatory centralised purchasing arrangement purposed for 4R cod over 20 years ago.

10. I recommend that government review the administration of its Fisheries Loan Guarantee Program to ensure that it is contributing to, and not hindering, the financial independence of individual harvesters.

INDUSTRY CAPACITY

Conclusions

The current level of processing capacity is too high and the numbers of processing facilities are far too many and ought to be reduced through some manner of consolidation. A similar situation in the harvesting sector must also be addressed. Only increased profitability of harvesting and processing will change some of the deficiencies that continue to plague this sector. There are too many shades of the past in the present industry, especially the continued existence of a multiplicity of under-financed harvesting and processing operations producing commodity products.

The Provincial Government, in conjunction with licensed processors, must take action to reduce capacity in the processing sector, which it has authority to manage. As well, it should encourage and assist the industry to achieve the necessary adjustments to federal licensing policy that would allow a more efficient fleet configuration to emerge in all parts of the inshore fleets. It would be advisable to consider a joint federal/provincial initiative to develop a "made-in Newfoundland and Labrador" solution to these co-dependent overcapacity problems.

Recommendations

11. I recommend the government enter into a joint industry capacity reduction exercise with DFO that takes a coordinated approach to addressing this problem in the inshore harvesting sector and its co-dependent processing sector.

12. I recommend that government assume leadership and join with industry in pressing DFO to adopt suitable measures to uphold and fully enforce its Fleet Separation and Owner/Operator policies to remove some existing impediments to fleet rationalisation. Once adequate enforcement of the Fleet Separation Policy is achieved, it should then encourage and assist the development and adoption of self-rationalisation plans by individual fleets to improve their

operating and financial efficiency. Such plans should include acquiring larger, more suitable and safer harvesting platforms through the transferring and combining of individual licences and IQs within realistic accumulation limits. This approach must also include removing, or changing drastically, the current length barriers in vessel replacement. It also must permit the short-term temporary combining of any size of enterprises in 2006 if resource and market conditions do not improve.

13. I recommend that government provide interim financing where it is necessary to enable the development and adoption of fleet self-rationalisation plans by harvesters. This could take the form of interest-free, or low-interest, loans to fleet organisations to be re-paid from the proceeds of re-sale of surrendered IQs or licences.

14. I recommend that government provide the basis for industry funded buyouts of processing capacity. This would involve the purchase and removal of processing licences through a reverse auction, or other agreed system, that is designed and managed by the industry, who would be the main beneficiaries of reduced capacity. Government would provide the up-front financing for the buyouts and recover the funds used in a given year by a pro-rata levy on the respective species licence fees for the following year's renewals. It would also commit to cancel the licences removed and not issue any others.

COORDINATION OF FISHING INDUSTRY MANAGEMENT

Conclusions

As I examined the various underlying causes of the present industry problems, it became apparent to me the extent to which these were the result of uncoordinated management decisions and actions by both levels of government. These decisions and action were taken in isolation in each government's sphere of authority over the last decade; and resulted in the current excess capacity in both sectors with no

immediate action in sight to remedy them. I became gradually convinced that this is a classic case of the need for some form of coordinated management arrangement to address a jointly caused problem in a set of circumstances unique to this province.

I had been laying blame at the feet of both levels of government for either causing parts of the current problems or not moving on necessary solutions. Then I realised that coordination of management actions for each sector is a definite part of the long-term solution to this overall problem. This approach would avoid the mistakes of the past but also provide the basis for effectively dealing with a serious capacity and efficiency problem that has been either jointly created or mutually left unresolved.

RECOMMENDATION

15. **I recommend the Provincial Government seek a workable arrangement with the Federal Government for coordinated and joint management of the harvesting and processing sectors. This would be an arrangement where the decision-making powers of both governments are delegated to a single management authority. This authority should administer an agreed set of management policies.**

EXCESS PROCESSING LABOUR

Conclusions

The persistent problem of excess regional or local labour pools can only be solved by streamlining the processing sector so that fewer workers can work longer periods in fewer plants. Some form of safety net, or labour exit strategy, will be needed for those who cannot continue in this industry. A special case must be made to convince the federal government to become involved in a final remedy to an industry structural problem that is due to several parts of its fisheries, fiscal and trade policies. Earlier I likened this situation to the similar problem faced by the country's textile industry.

Recommendations

16. I recommend that government, as part of an overall effort to re-structure the inshore sector through the actions recommended above, develop an adjustment strategy for removal of excess labour. The government should seek financial participation by the federal government and the provincial industry in this exercise. This labour adjustment program should be designed in timing and scope to complement and assist the reductions in capacity that are needed in the inshore processing sector. The analogy of the Canadian textile industry should be employed in this endeavour.

A NEW COMMITMENT

Conclusions

A renewed commitment is needed from government, processors and harvesters "to pull this industry up by its boot straps", eliminate the debilitating "talqual mentality" that has for too long prevented real prosperity and increase the contribution of this industry to the provincial economy even beyond the significant level it has reached in recent years. The industry is currently seriously wounded by divergent actions that have been taken by some industry participants on both sides in the last few years. Some of these have prevented resolving issues that have brought this sector virtually to its knees in 2005. It is in time of crisis that leadership is tested. The real crisis we now face is that rare opportunity for real leadership to come forth.

Recommendations

17. I recommend that government take the lead in re-establishing responsible action that is so badly needed in this industry. Government should do this by first clearly stating its policy intentions to control processing licensing and capacity; and taking a firm and responsible position on the legislative provisions for conduct of collective bargaining in the inshore harvesting sector. It should also encourage harvesters and processors to re-assess their recent

approaches to industrial relations and the general directions in which these are taking the industry. This revitalisation of active leadership is crucial in this sector because of its influence on the economic state of such large geographical parts of the province.

I hope this report outlines the depth and the nature of the crisis that needs to be addressed. We currently have before us a recipe for disaster. Nevertheless, I also think that we have equally the opportunity for a solution. Now is the time for action. This places an extra burden on the Provincial Government to focus their attention on what, in my view, is not only an obvious solution to the present crisis but a new strategy for the fishery of the future. In moving towards that goal, it will face the same negativism, nay-saying and pandering that arises in any crisis situation.

APPENDIX 1

SUMMARY LISTING OF RECOMMENDATIONS

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RAW MATERIAL SHARING

1. I recommend that government terminate this project in crab and abandon the concept totally until, and unless, the overall industry mutually agrees to some variation of it in the future. This approach, as currently proposed, can only work to the extent its parameters, scope, terms and conditions, limitations etc. are first agreed in the collective bargaining arena.

COLLECTIVE BARGAINING

A New Price Setting Mechanism

2. Therefore, I strongly recommend that government take the following actions immediately:
   - ❖ Establish a Special Standing Fish Price Setting Panel that:
     - Consists of three permanent members, including a chair, appointed by government.
     - Is given the necessary scheduling, facilitation and arbitration powers and capabilities to have prices and other matters settled through collective bargaining by specified dates. These scheduling, facilitation and arbitration activities should be assigned to a permanent staff member.
     - Has access to adequate market research, assessment and monitoring capability to provide the parties with appropriate market and related information. For example, in the case of crab, this would be the same, or a similar, service that seems to have been satisfactorily provided by John Sackton since 1998.

- In addition, and most importantly, has the complete authority to set prices unilaterally if parties cannot agree by specified "drop dead" dates. If no collective bargaining is taking place or no agreements binding on all operators are being reached by these dates, the Panel should schedule a "Price Setting" hearing at which all parties could make appropriate presentations to it before it takes the final and binding decision on price. In the case of crab, this hearing date should be such that a price is set in time for the fishery to commence on April 1.
- Is empowered to deal with any unresolved matters pertaining to the conduct of the fishery that either party or the government may refer to it for a binding decision. These would include inter alia: trip limits, quality requirements, marketing strategies, the use of tied sales conditions, sharing arrangements etc. that influence the commercial conduct of harvesting and processing operations.
- Has the authority to institute monitoring and penalising of specified predatory practices.

3. Restore the legislative provision that collective agreements reached with processors accounting for at least 50 percent of the previous year's production of a species become binding on all processors licensed for that species.
4. As well, I recommend that government clearly specify that under this permanent Panel arrangement, while individual harvesters and processors retain the right to refrain from fishing or processing under any individual price, organised work stoppages would be illegal.

Improvements in the Collective Bargaining Provisions

5. I also recommend that government immediately commence the necessary legislative arrangements to make the following amendments to the FICBA that will correct certain current deficiencies and bring the provisions for collective bargaining in the fishing industry up to the general standard of labour relations

in the province. I understand these items were the subject of considerable consultations and discussions with industry leaders earlier this year. The recommended amendments are the following:

- To provide for the accreditation of processor organisations on the basis of a single species. Indeed, I recommend further that Labrador should always be excluded from accreditation of Island-based processor organisations. This will simply take account of the special provisions that now exist, and should continue, vis-à-vis processing activities in that area.
- To improve access to the Labour Relations Board so that all fishing industry parties have the same privileges as other employers and employees and the right to appeal to the Board to make a determination regarding the binding effect of a collective agreement.
- To allow either party to a collective agreement, to request appointment of an arbitrator to resolve an outstanding grievance and to enable the immediate filing of the arbitrator's decision with the Supreme Court of Newfoundland and Labrador, Trial Division, and to ensure it is enforceable 48 hours after doing so.
- To provide the Labour Relations Board with the authority to declare an unlawful work stoppage and to issue a cease and desist order, which is enforceable as an order of the Supreme Court within 48 hours.
- To increase fines and penalties for unlawful work stoppages.
- To allow an accredited processors' organization to recover negotiating costs from all processors who benefit from the negotiations and to whom the resulting collective agreement would apply.

6. Finally, I recommend that government make these changes to the collective bargaining framework for the fishery by acting quickly and authoritatively.

INDUSTRY STABILITY

7. I recommend that government encourage, assist and, if possible, enable industry participants to increase cooperation in the sharing, distributing and transferring of raw material supplies, especially in times of temporary over-supply. The minimum element of such an approach would be a "glut desk" arrangement for crab initially, followed by any other species on which industry participants mutually agree.

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